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**BEYOND MEASURE: NEW APPROACHES TO
ANALYZING CONGRESSIONAL OVERSIGHT OF
HOMELAND SECURITY**

by

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March 2015

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CONGRESSIONAL OVERSIGHT OF HOMELAND SECURITY**

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ABSTRACT

This paper will explore the implications of congressional oversight of homeland security, specifically the Department of Homeland Security (DHS). Oversight of DHS has been extensively researched since the 9/11 Commission recommended that it be reformed. This thesis argues that much of the previous research into this topic relied on a limited view of oversight and used a limited set of tools to measure it. This thesis reviews the existing literature on homeland security oversight and offers alternative ways of measuring oversight. It conducts two case studies to establish a more complete view of homeland security oversight. Then, it quantitatively analyzes legislative data and offers a new approach to using agency interactions to provide a more meaningful picture of homeland security oversight. Finally, the thesis offers recommendations based on the conclusions of the research to achieve optimal congressional oversight of homeland security.

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LIST OF ACRONYMS AND ABBREVIATIONS

AFG	Assistance to firefighter Grants
BENS	Business Executives for National Security
CBP	U.S. Customs and Border Protection
CHS	House Committee on Homeland Security
CHS	House Committee on Homeland Security
CISOMB	Citizenship and Immigration Services Ombudsman
CNE	Counter Narcotics Enforcement
CQ	Congressional Quarterly
CRCL	Office for Civil Rights and Civil Liberties
CRS	Congressional research Service
CS&T	Senate Commerce Science and Transportation Committee
CSIS	Center for Strategic and International Studies
DHS	U.S. Department of Homeland Security
DNDO	Domestic Nuclear Detection Office
DOD	Department of Defense
EPW	Senate Committee on Environment and Public Works
FEMA	Federal Emergency Management Agency
FLETC	Federal Law Enforcement Training Center
GCR	Gulf Coast Recovery Office
HAC	House Appropriations Committee
HAg	House Agriculture Committee
HASC	House Armed Services Committee
HE&C	House Energy and Commerce Committee
HFA	House Foreign Affairs Committee
HFS	House Financial Service Committee
HJC	House Judiciary Committee
HNR	House Committee on Natural resources
HSci	House Science and Technology Committee
HSGAC	Senate Homeland Security and Governmental Affairs Committee
HUD	U.S. Department of Housing and Urban Development

I&A	Office of Intelligence and Analysis
ICE	U.S. Immigration and Customs Enforcement
IG	Inspector General
IGA	Intergovernmental Affairs
MGMT	Management Directorate
NPPD	National Protection and Programs Directorate
OCFO	Office of the Chief Financial Officer
OCIO	Office of the Chief Information Officer
OGC	Officer of the General Counsel
OGR	House Committee on Oversight and Government Reform
OHA	Office of Health Affairs
OIG	Office of the Inspector General
OLA	Office of Legislative Affairs, U.S. Department of Homeland Security
OPS	Operations Coordination and Planning
PLCY	Office of Policy
PRIV	Privacy Office
S&T	Science and Technology Directorate
SAC	Senate Appropriations Committee
SAFER	Staffing for Adequate Fire and Emergency Response Grants
SAg	Senate Agriculture Committee
SASC	Senate Armed Services Committee
SBud	Senate Budget
SENR	Senate Energy and Natural Resources
SFin	Senate Finance Committee
SFR	Senate Foreign Relations Committee
SIA	Senate Indian Affairs Committee
SJC	Senate Judiciary Committee
SSB	Senate Small Business
SSCI	Senate Select Committee on Intelligence
T&I	House Committee on Transportation and Infrastructure
TSA	Transportation Security Administration
USCG	United States Coast Guard

USCIS	U.S. Citizenship and Immigration Services
USFA	U.S. Fire Administration
USSS	United States Secret Service
W&M	House Ways and Means Committee

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I. INTRODUCTION

This paper will explore the implications of the current congressional oversight of the homeland security and, specifically, the Department of Homeland Security (DHS). Oversight of DHS has been extensively researched since the 9/11 Commission recommended that it be reformed.¹ This thesis argues that much of the previous research into this topic relied on a limited view of oversight and used a limited set of tools to measure it. This thesis will review the existing literature on homeland security oversight and offer two alternative ways of measuring oversight to augment the consensus method used (measuring agency interactions with Congress). In addition to the agency interaction method, bill referral analysis and a review of explicit jurisdiction in the rules of the House and Senate will be applied to two case studies to establish a more complete view of homeland security oversight. Then, the thesis will analyze legislative data from Congress.gov to further explore the implications of the current congressional oversight of DHS. Lastly, it will offer a new approach to using agency interactions to provide a meaningful picture of homeland security oversight. The thesis will offer recommendations, based on the conclusions of the research, to achieve optimal congressional oversight of homeland security.

The 9/11 Commission² identified four key failures that contributed to the terrorist attacks of September 11, 2001. One of the failures was in counterterrorism policy.³ Insofar as policy is set or altered through congressional oversight, the commission recommended that the United States Congress reform the way it conducts oversight over

¹ National Commission on Terrorist Attacks Upon the United States [9/11 Commission], *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (Washington, DC: U.S. Government Printing Office, 2004), 348–50.

² The 9/11 Commission, formally the National Commission on Terrorist Attacks upon the United States, was created pursuant to P.L. 107–306. It was chaired by former Governor Thomas H. Kean (R-NJ) and vice-chaired by former Representative Lee H. Hamilton (D-IN). Its final report was issued July 22, 2004.

³ 9/11 Commission, *The 9/11 Commission Report*, 348–50.

the Department of Homeland Security (DHS), citing specifically the number of committees and subcommittees that have jurisdiction over DHS:⁴

Recommendation: Congress should create a single, principal point of oversight and review for homeland security. Congressional leaders are best able to judge what committee should have jurisdiction over this department and its duties. But we believe that Congress does have the obligation to choose one in the House and one in the Senate, and that this committee should be a permanent standing committee with a nonpartisan staff.⁵

The commissioners labeled their congressional reform recommendation as “one of the most difficult and important.”⁶ In addition, they recognized any success in achieving a “unity of effort in executive management [could] be lost if it is fractured by divided congressional oversight.”⁷ Despite frequent attention on the nature of the problem and support for the recommendation’s implementation, it is one of the “major unfinished” recommendations of the commission’s final report.⁸ The commissioners identified a problem with homeland security and recommended a solution, which is problematic because the problem the commissioners saw was based on an incomplete understanding of how Congress oversees complex issues, perhaps an incomplete understanding of the nature of homeland security and an extremely limited view of how oversight is measured.

In contrast to many of the other recommendations supported throughout the report, there is very little background arguing in favor of the recommendation to reorganize oversight of homeland security in Congress. The report indicated the members of the 9/11 Commission relied on the work of previous commissions. While the earlier commissions on homeland security also recommend a singular homeland security

⁴ Ibid., 421.

⁵ Ibid.

⁶ Ibid., 420.

⁷ Ibid.

⁸ National Security Preparedness Group, *Tenth Anniversary Report Card: The Status of the 9/11 Commission Recommendations* (Washington, DC: Bipartisan Policy Center, 2011), 10, <http://bipartisanpolicy.org/sites/default/files/CommissionRecommendations.pdf>.

committee, similar to a singular intelligence committee, they were written before the creation of DHS.

Fractured oversight potentially creates serious problems for homeland security. DHS has outlined the time and resources it spends responding to congressional oversight requests, often to multiple committees on the same topic.⁹ Different congressional committees, owing to their varying foci, have given conflicting policy direction to DHS.¹⁰ In addition, jurisdictional battles within Congress impact the quality and speed of passage of necessary legislation.¹¹ Furthermore, the fragmentation of DHS congressional oversight has contributed to the “anemic” homeland security policy regime by not creating a parallel support structure to DHS to promote homeland security outside the federal government.¹²

Homeland security is a multidisciplinary field that includes such disparate functions as public health, fire services, counterterrorism, cybersecurity, and flood mitigation. Thus, it is not surprising that the field would be overseen by multiple committees of Congress.¹³ The 9/11 Commission and others have argued that in overseeing these pieces of homeland security, Congress needs to reorganize to ensure that it could effectively gauge whether the Department of Homeland Security and the homeland security enterprise are effectively protecting America. The commission contemplated that there could be oversight by more than one committee through a “principal,” not exclusive, committee in each house of Congress. Therefore, it is necessary to measure jurisdiction to gauge progress toward implementation. As this thesis will discuss, the method of measurement is important as it will produce different pictures

⁹ Michael Chertoff, letter to Peter T. King, May 25, 2007, <http://www.hsdl.org/?abstract&did=683475>.

¹⁰ Task Force on Streamlining and Consolidating Congressional Oversight of the U.S. Department of Homeland Security, *Streamlining and Consolidating Congressional Oversight of the U.S. Department of Homeland Security* (Aspen, CO: Aspen Institute, 2013), <http://www.aspeninstitute.org/publications/task-force-report-streamlining-consolidating-congressional-oversight-us-department>, 9–17; Timothy G. M. Balunis, and William D. Hemphill, *Gordium Revisited: Beyond the Jurisdictional Entanglement of DHS* (Cambridge, MA: John F. Kennedy School of Government, 2008), 10–21.

¹¹ Task Force, *Streamlining and Consolidating Congressional Oversight*.

¹² Peter J. May, Ashley E. Jochim, and Joshua Sapatichne, “Constructing Homeland Security: An Anemic Policy Regime,” *Policy Studies Journal* 39, no. 2 (2011): 285–307.

¹³ *Ibid.*

of jurisdiction and lead to different conclusions about how best to optimize Congress's role in homeland security policy. The 9/11 Commission is right that Congress has an incredibly important role in homeland security policy. Its recommendation on how best to optimize that role needs to be re-assessed in light of their limited analysis on this topic. This thesis seeks to answer the question of how to optimize homeland security congressional oversight.

Research Design

This thesis investigates oversight of homeland security by the United States Congress. It will examine the recommendations that came out of the 9/11 Commission and others that aimed to improve oversight by consolidating it.

From the literature, the thesis establishes that there are several ways to measure congressional oversight over issues or agencies and that though each measure produces different picture of oversight, none is perfect or complete. The differences in these pictures provides insight into homeland security and its oversight structure. The application of the three methods to all of homeland security is likely to be too complex to be useful in gaining greater understanding. The case studies aim to look at a consumable piece of DHS. In both case studies, three methods of measuring oversight will be applied to different subsets of homeland security: a sub-agency within DHS and a major homeland security event. Both case studies will examine whether it would improve policy to make changes in the oversight structure.

The thesis also includes a quantitative analysis of available data on agency interactions and legislation that will examine whether the oversight structure has had any impacts on homeland security and if there are opportunities to improve the structure.

Selection

Both overall homeland security and the Department Homeland Security will be reviewed. The cases and quantitative data were selected both on the availability of data and to get coverage over a large area of homeland security policy.

Limits

This study does not look at oversight of homeland security from groups outside of the U.S. Congress and will only address homeland security elements outside of DHS in a limited way. This is in part due to limitations on the available data.

Type and Mode of Analysis

The research will make use of case study analysis to identify specific areas of homeland security and evaluate whether changes in their oversight structure would impact homeland security policy. In addition, the research will also look at the nature of homeland security and evaluate the capacity of Congress to change oversight.

The research will also utilize quantitative analysis of congressional activity (DHS hearing and briefing metrics) and bill referrals and other data to evaluate the oversight of homeland security from Congress. In addition, the thesis will include analysis of the hearing and briefing counts from which other studies have derived the number of committees with oversight of DHS. Furthermore the research will look more critically at that data and offer more complex analysis of it. Additionally, in order to provide a more detailed and nuanced view, the data will be analyzed relationally, that is studying which committees have exercised oversight over which parts of DHS. This study will also analyze briefing data, which is more plentiful than hearing data, and data pertaining to bill referrals. Whereas a review of bill referrals in the cases studies will provide insight into specific parts of homeland security, additional insight could be gleaned from analyzing bulk data.

Output

The finished product will reassess the previous recommendations (including that of the 9/11 Commission) that have been made and take a deeper look by offering alternative methods for analysis in the policy area. It will determine what if any steps Congress should take to improve oversight of homeland security. If the research shows that consolidation, as the 9/11 Commission popularized in its recommendation, is not a

valid way to improve oversight, the conclusion will offer a new framework for thinking about oversight to better guide future homeland security leaders.

Chapter II will review all the relevant literature on congressional oversight of DHS and how it came into being, how it has changed, and what recommendations for change there have been. The review will also cover the purpose of oversight, various styles of oversight, and establish three methods for measuring oversight, including how these have been applied to DHS in the past. Chapter III will apply each of the three methods of measuring oversight established in the literature to two case studies. Chapter IV will analyze quantitative data about bill referrals and agency interactions to explore further the implications of the current oversight of homeland security. Chapter V will summarize the conclusions made in the previous chapters and provide a series of recommendations as well as a pragmatic implementation plan.

II. LITERATURE REVIEW

The relevant literature surrounding the topic of congressional jurisdiction over homeland security can be divided into two major categories: the somewhat finite number of sources that directly address the topic and those relevant to this topic because they address either homeland security policy or congressional oversight's impact on policy. There are perhaps 50 or fewer works that address congressional oversight of homeland security and only a portion of those delve into the impact on policy in more than a cursory way, furthermore some of these works are quite minor. These works fall into four general categories: scholarly articles; public policy organization, think-tank, and government commission reports, generally advocating for change; raw data from Congress or DHS; and news reports, editorials, and journalistic investigations that primarily use that data. On the other side of the split, there are similar types of work; the relevant works on congressional oversight and homeland security policy in general tend to concentrate on published books and peer reviewed journal articles. The Congressional Research Service being the key source on congressional procedure and theory.

Of the works that look specifically at the congressional oversight of homeland security, they overwhelmingly focus on the number of committees involved in oversight or the lack of consolidated oversight. It has become somewhat of a clichéd concept in discussions about the role of Congress in homeland security to talk about the number of oversight committees. The idea that DHS reported to an inordinate number of committees was made popular by the 9/11 Commission report.¹⁴

The 9/11 Commission prided itself on seeing its recommendations implemented. The literature shows that there are numerous conferences and publications with commission members as authors or participants conducting status reviews or report cards on the commission's recommendations. As such, those recommendations that have not

¹⁴ The 9/11 Commission, formally the National Commission on Terrorist Attacks upon the United States, was created pursuant to P.L. 107-306. It was chaired by former Governor Thomas H. Kean (R-NJ) and vice-chaired by former Representative Lee H. Hamilton (D-IN). Its final report was issued July 22, 2004.

been fully implemented are somewhat infamous. Consolidation of congressional oversight is often discussed right alongside whether or not the United States fully has the ability to “connect the dots” before an incident and utilize interoperable communications during an incident, topics that were at the heart of the report’s content and popular thinking on the attacks of 9/11. Because of the way it is tied to the 9/11 Commission report, nearly every direct piece of literature takes as granted the need to consolidate oversight. There are few notable instances where this does not occur, which will be discussed in this review.

A. PRIMARY LITERATURE RESOURCES

The 9/11 Commission identified four key failures that contributed to the terrorist attacks of September 11, 2001. One of the failures was in counterterrorism policy.¹⁵ Insofar as policy is set or altered through congressional oversight, the commission recommended that the United States Congress reform the way it conducts oversight over the Department of Homeland Security, citing specifically the number of committees and subcommittees that have jurisdiction over DHS:

Recommendation: Congress should create a single, principal point of oversight and review for homeland security. Congressional leaders are best able to judge what committee should have jurisdiction over this department and its duties. But we believe that Congress does have the obligation to choose one in the House and one in the Senate, and that this committee should be a permanent standing committee with a nonpartisan staff.¹⁶

The commissioners labeled their congressional reform recommendation as “one of the most difficult and important.”¹⁷ They recognized any success in achieving a “unity of effort in executive management [could] be lost if it is fractured by divided congressional oversight.”¹⁸ Despite frequent attention on the nature of the problem and

¹⁵ 9/11 Commission, *The 9/11 Commission Report*, 348–50.

¹⁶ *Ibid.*, 421.

¹⁷ *Ibid.*, 420.

¹⁸ *Ibid.*

support for the recommendation's implementation, it is one of the "major unfinished" recommendations on the Commission's final report.¹⁹

1. Commissions Addressing "Homeland Security" Prior to 9/11

Beginning in 1999, three so-called "blue ribbon" commissions were formed to look at national security, counterterrorism, and preparedness for the twenty-first century. The Gilmore Commission,²⁰ the Hart-Rudman Commission,²¹ and the Bremer Commission²² all presciently noted the uncoordinated nature of homeland security functions in the executive branch prior to 9/11. Similarly, they noted that congressional oversight of those functions was also fractured and recommended a variety of solutions to reorganize Congress or streamline oversight through select or joint committees.²³

These three commissions made efforts to identify and quantify how fractured oversight was. In June of 2000, the Bremer Commission listed 12 "key" committees (not including subcommittees) with oversight responsibility for counterterrorism.²⁴ In February 2001, the Hart-Rudman Commission noted, "that counterterrorism and information security issues involve nearly *two dozen* [emphasis in the original]

¹⁹ National Security Preparedness Group, *Tenth Anniversary Report Card*, 10.

²⁰ The Gilmore Commission, formally named the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, was created by Public Law 105–166. It was chaired by former Virginia Governor James S. Gilmore, III and issued five annual reports from December 1999 to December 2003.

²¹ The Hart-Rudman Commission, formally named the United States Commission on National Security/21st Century, was chartered by Secretary of Defense William S. Cohen on September 2, 1999. It was co-chaired by former Senators Gary Hart (D-CO) and Warren B. Rudman (R-NH). The commission organized its business into three phases, and it issued a report corresponding to each phase as well as several other supporting documents between August 1999 and April 2001.

²² The Bremer Commission, formally named the National Commission on Terrorism, was created pursuant to Public Law 105–277. It was chaired by L. Paul Bremer III, former ambassador-at-large for counterterrorism, and it published its only report on June 7, 2000.

²³ Michael L. Koempel, *Homeland Security: Compendium of Recommendations Relevant to House Committee Organization and Analysis of Considerations for the House, and 109th and 110th Congresses Epilogue* (Washington, DC: Congressional Research Service, 2007), <http://www.fas.org/sgp/crs/homesecc/RL32711.pdf>.

²⁴ The Bremer Commission, *Countering the Changing Threat of International Terrorism* (Washington, DC: The National Commission on Terrorism, 2000), <http://www.gpo.gov/fdsys/pkg/GPO-COUNTERINGTERRORISM/pdf/GPO-COUNTERINGTERRORISM-1-5-3.pdf>, 35.

congressional committees and subcommittees.”²⁵ In December 2001, the Gilmore Commission recommended creating a special committee that should be comprised of “relevant . . . committees and subcommittees that currently have cognizance over Federal programs and activities to combat terrorism” and lists 24 committees (not including subcommittees) that should be represented at a minimum.²⁶

Each of these commissions was writing prior to the reorganization of the executive branch following September 11, 2001. The consolidation they were envisioning likely was not going to conduct primary oversight of any one agency, but rather ensure that there was a level of consistency to planning, policy and operations in the parts of the executive branch that conduct homeland security missions.

2. Think Tank Reviews

After 9/11, while the executive branch took action on portions of the recommendations of the three counterterrorism commissions, policy advocates continued to push Congress to do the same. A 2002 white paper from the Center for Strategic and International Studies recommended the creation of select committees, one in each house, to oversee the proposed Department of Homeland Security.²⁷ It further recommended that the committees be comprised of the chair and ranking minority member of committees and subcommittees “that now exercise oversight over the various agencies that will be consolidated in the new Department of Homeland Security” and lists 34 House committees and subcommittees and eight Senate committees.²⁸

²⁵ The Hart-Rudman Commission, *Road Map for National Security: Imperative for Change—The Phase III Report of the U.S. Commission on National Security/21st Century* (Washington, DC: The U.S. Commission on National Security/21st Century, 2001), <http://www.fas.org/man/docs/nwc/phaseiii.pdf>, 28.

²⁶ The Gilmore Commission, *Second Annual Report: Toward a National Strategy for Combating Terrorism* (Washington, DC: Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, 2000), <http://www.rand.org/content/dam/rand/www/external/nsrd/terrpanel/terror2.pdf>, 18, note 28.

²⁷ Center for Strategic and International Studies, *Meeting the Challenges of Establishing a New Department of Homeland Security* (Washington, DC: Center for Strategic and International Studies, 2002), <http://csis.org/files/media/csis/pubs/hamrefinalpaper.pdf>, 20.

²⁸ *Ibid.*

The Homeland Security Act of 2002²⁹ was created the Department of Homeland Security, principally by merging 22 government organizations that were pulled out in whole or in part from other federal departments and agencies.³⁰ At the same time, Congress recognized the need to at least consider whether its own structure needed to be realigned. The Homeland Security Act includes a “sense of Congress that each House of Congress should review its committee structure in light of the reorganization of responsibilities within the executive branch.”³¹

The creation of DHS provided policy advocates and researchers something concrete to measure with regard to how Congress organized its oversight of homeland security: how many committees have oversight jurisdiction over the elements that became DHS? The Brookings Institution provided the first report, “by the [George W. Bush] administration’s count, thirteen full committees in each house, and a total of 88 committees and subcommittees overall, shared responsibility for overseeing the homeland security mission in 2002.”³²

In its final report, the 9/11 Commission repeated the claim that “the leaders of the Department of Homeland Security now appear before 88 committees and subcommittees of Congress.”³³ A report by the Center for Strategic and International Studies (CSIS) and Business Executives for National Security (BENS), released in December 2004, confirmed the 88 committees and subcommittees reported by the Brookings Institution

²⁹ Homeland Security Act of 2002, P.L. 107–296, 107th Cong. (2002).

³⁰ U.S. Department of Homeland Security, “Creation of the Department of Homeland Security,” accessed February 20, 2015, <http://www.dhs.gov/creation-department-homeland-security>.

³¹ Homeland Security Act of 2002, P.L. 107–296, 107th Cong. (2002); §1503 quoted in Michael E. O’Hanlon et al., *Protecting the American Homeland* (Washington, DC: Brookings Institution, 2003), <http://www.brookings.edu/fp/projects/homeland/newhomeland.pdf>, xxviii.

³² *Ibid.*

³³ The 9/11 Commission does not provide any source or method for calculating this assertion. Given the context and the Brookings report, it is likely it came from the Bush administration. 9/11 Commission, *The 9/11 Commission Report*, 421.

and the 9/11 Commission.³⁴ The CSIS/BENS report pushed into new territory with regard to measuring oversight. It began to measure change, noting that oversight of DHS “shrunk to a ‘mere’ 79 [committees and subcommittees] after the reorganization in the 108th Congress.”³⁵ In addition to measuring change, the CSIS/BENS study provided a comparison: only 36 committees and subcommittees have jurisdiction over the Department of Defense. The report also created an enduring image, a spider web like diagram (see Figure 1) showing the connection between all 79 committees and the various elements of DHS.³⁶

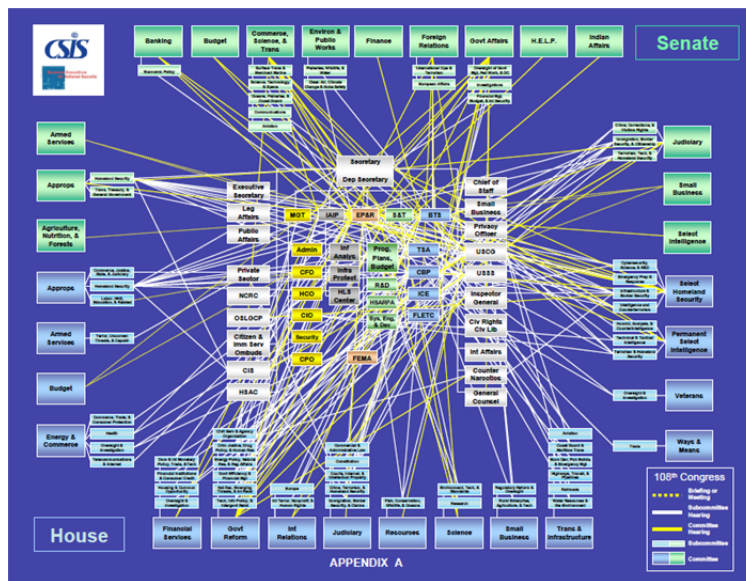


Figure 1. “Spider web chart” of committee oversight of DHS elements.³⁷

³⁴ Based on its analysis of congressional testimony databases and congressional committee websites. Center for Strategic and International Studies and Business Executives for National Security [CSIS/BENS], *Untangling the Web: Congressional Oversight and the Department of Homeland Security* (Washington, DC: Center for Strategic and International Studies, and Business Executives for National Security, 2014), http://csis.org/files/media/isis/events/041210_dhs_tf_whitepaper.pdf, 2.

³⁵ The major reforms in the 108th Congress involved consolidating appropriations responsibilities from eight subcommittees to one in each house, and the creation of the Select Committee on Homeland Security. If everything else stayed the same, that would mean a reduction of 13 committees and subcommittees, but the reduction was only by nine meaning four new subcommittees had jurisdiction. CSIS/BENS, *Untangling the Web*, 2.

³⁶ CSIS/BENS, *Untangling the Web*, Appendix A.

³⁷ *Ibid.*

The 9/11 Commission's recommendation to consolidate oversight popularized the concept of fragmented oversight of DHS. Several task force reports, news articles, and statements by 9/11 commissioners highlight the lack of congressional action on this recommendation in the months following the commission's final report. However, following the initial interest in this topic, there was a gap in reports on the congressional jurisdiction over DHS until late 2007. After the 9/11 Commission had made its recommendation there was reason to believe it was beginning to be implemented. The CSIS/BENS white paper saw the committees of jurisdiction drop from 88 to 79 with the minor reforms made in the 108th Congress.³⁸ With the start of the 109th Congress (2005–2006), the House elevated the Committee on Homeland Security (CHS) from select to standing status and formally outlined its jurisdiction in the House rules. The Senate added jurisdiction to the Governmental Affairs Committee to create the Homeland Security and Governmental Affairs Committee (HSGAC). While both efforts were partial consolidations,³⁹ it appeared that the 9/11 Commission's recommendation was beginning to be implemented. However, data collected by the DHS Office of Legislative Affairs in the 109th Congress would tell a different story.

3. Data and Analysis from DHS and Media Coverage

The DHS Office of Legislative Affairs (OLA) tracks many interactions between the department and Congress. OLA's metrics are the official DHS accounting of hearings and briefings.⁴⁰ DHS began reporting on the number of committees exercising

³⁸ The major reforms were the creation of the second House Select Committee on Homeland Security, and consolidation of appropriations subcommittees.

³⁹ As one example, in both the House and Senate, immigration policy remained in the explicit jurisdiction of the judiciary committees.

⁴⁰ Briefing metrics do not have the same quality as hearing metrics. There are likely over 100 legislative affairs professionals across the department that could schedule briefings or other interactions that would be counted in the metrics (e.g., conference calls, informal meetings, multiple interactions during a multi-day conference or a staff or member of Congress delegation trip). Briefings contained in these metrics did occur, but the metrics do not account for every interaction. Other types of interactions such as letters, emails, staff requests, phone calls, informal meetings, requests routed through the Congressional Research Service (CRS) or Government Accounting Office (GAO) are not tracked by DHS Office of Legislative Affairs (OLA) or are not tracked in a way as to allow meaningful analysis with regard to determining oversight jurisdiction.

jurisdiction over DHS based on OLA's metrics at the conclusion of the 109th Congress.⁴¹ According to DHS analysis, utilizing the agency interaction method for assessing jurisdiction, the number of committees exercising jurisdiction in the 109th Congress was 86,⁴² higher than the previous congress based on the CSIS/BENS analysis.

Beginning in 2007, the department began significant efforts, notably including Secretary Michael Chertoff, to raise awareness about the level of fragmentation of oversight and its effects on operations. The Chairman of the House Committee on Homeland Security, Peter King, made a high profile request of the department for information on the burden of Congress's fractured oversight of DHS.⁴³ The response to that letter and subsequent releases of data by OLA led to a number of news articles and reports utilizing the agency interaction method of measuring oversight. *Congressional Quarterly* (CQ) published a five-part series on congressional oversight of DHS in March and April 2008 that interviewed DHS officials and members of Congress.⁴⁴ Sarah Laskow conducted an in-depth investigation in 2009 for the Center for Public Integrity that catalogued just how little had been accomplished in the five years since the 9/11 Commission's recommendation.⁴⁵

With the new analysis for the 110th Congress, which concluded 108 committees and subcommittees had jurisdiction, a new round of articles and reports began in 2010 including ones by National Public Radio,⁴⁶ the Heritage Foundation,⁴⁷ the Associated

⁴¹ This is the first full Congress for which records were kept.

⁴² Michael Chertoff, letter to Peter King, May 25, 2007, <http://www.hsdl.org/?abstract&did=683475>, Exhibit A.

⁴³ Ibid.

⁴⁴ Rob Margetta, "CQ Homeland Security," *Congressional Quarterly* (2008).

⁴⁵ Sarah Laskow, "Is Congress Failing on Homeland Security Oversight?" Center for Public Integrity, July 16, 2009, <http://www.publicintegrity.org/2009/07/16/2822/congress-failing-homeland-security-oversight>.

⁴⁶ "Who Oversees Homeland Security? Um, Who Doesn't?," *National Public Radio*, July 20, 2010, <http://www.npr.org/templates/story/story.php?storyId=128642876>.

⁴⁷ Paul Rosenzweig, Jena McNeill, and James Jay Carafano, "Stopping the Chaos: A Proposal for Reorganization of Congressional Oversight of the Department of Homeland Security," Heritage Foundation, accessed November 19, 2013, <http://www.heritage.org/research/reports/2010/11/stopping-the-chaos-a-proposal-for-reorganization-of-congressional-oversight-of-dhs>.

Press,⁴⁸ and Federal News Radio.⁴⁹ The 9/11 Commission Chair Kean and Vice Chair Hamilton participated two unrelated task forces one in September 2011⁵⁰ and one in September 2013,⁵¹ both of which highlighted the lack of action on the 9/11 Commission's recommendations; the 2013 task force was devoted entirely to congressional oversight reform.

Most of the literature identified the problem in more or less detail but lacked any rigorous analysis. It seems the number of oversight committees reported (in some cases without giving a full accounting of how they achieved that number) seemed big enough to fail the common sense test.

4. Academic Research

Timothy Balunis and William Hemphill conducted the first methodical review of the DHS jurisdiction topic.⁵² They analyzed jurisdiction by overlaying House Rule X and Senate Rule XXV onto the committee hearings in the 110th Congress that called DHS witnesses to testify.⁵³ Additionally, they analyzed committee jurisdiction in the context of each hearing and identified the most likely jurisdictional “angle” that the committees were using to call each witness.⁵⁴ One example they offer is a Senate Committee on Environment and Public Works hearing on nuclear power plant safety, suggesting that the committee's jurisdiction over “nonmilitary environmental regulation and control of nuclear energy,” provided in Senate Rule XXV, is the “angle” the committee used to invite a DHS witness to testify.

⁴⁸ Alicia Caldwell, “Inside Washington: DHS Most Overseen Department,” May 17, 2011, <http://homeland.house.gov/news/associated-press-inside-washington-dhs-most-overseen-department>.

⁴⁹ Keith Biery Golick, “Former National Security Adviser Calls for Streamlined DHS Oversight,” *Federal News Radio*, August 3, 2012, <http://www.federalnewsradio.com/473/2976060/Former-national-security-adviser-calls-for-streamlined-DHS-oversight>.

⁵⁰ National Security Preparedness Group, *Tenth Anniversary Report Card*, 10.

⁵¹ Task Force, *Streamlining and Consolidating Congressional Oversight*.

⁵² It is unclear what methodology the Bremmer, Hart-Rudman, and Gilmore commissions or the CSIS/BENS used to count the number of committees they do not describe it in their reports.

⁵³ Balunis, and Hemphill, *Gordium Revisited*.

⁵⁴ *Ibid.*, 46.

Balunis and Hemphill analyzed all 274 hearings with DHS personnel testifying during the 110th Congress at the time of their analysis (2008) and cite the “angle” for all committees outside of the House and Senate Homeland Security Committees. They then identified the angles that are most often used and label them the “jurisdictional battleground,” which allowed them to provide recommendations for committee reorganization that will allow for the greatest amount of consolidation. They do consider whether the “informational efficiency,” which is the desired goal of consolidation, could end up having negative consequences, but ultimately come down on the side of much greater consolidation, given the preponderance of the evidence they reviewed.⁵⁵

In 2012, Balunis and Hemphill collaborated again to provide yet another quality contribution to the literature.⁵⁶ Mirroring the work of Peter May, Ashley E. Jochim, and Joshua Sapotichne⁵⁷ discussed later in the secondary sources, they apply an economics concept known as the Herfindahl index, which is a statistical measure of concentration most known for measuring market concentration when assessing horizontal mergers in banking and industrial markets.⁵⁸ They used the index to measure the jurisdictional clarity of DHS and compare it to other cabinet departments.⁵⁹ Based on congressional hearings, they analyzed the concentration of jurisdiction for DHS, the Department of Defense, the Department of Energy, and the Department of Transportation. Balunis and Hemphill gave each a score of jurisdictional clarity in the House and Senate. The index assigns a value of 0 to 100 based on the Herfindahl index formula:

$$H = \sum_{i=1}^N s_i^2 \times 100$$

⁵⁵ Ibid., 34.

⁵⁶ Timothy Balunis, and William Hemphill, “Congress and Homeland Security,” in *Congress and the Politics of National Security*, ed. David P. Auerswald and Colton C. Campbell, 100–120 (Cambridge, MA: Cambridge University Press, 2012).

⁵⁷ May, Jochim, and Sapotichne, “Constructing Homeland Security,” 285–307.

⁵⁸ Stephen A. Rhoades, “The Herfindahl-Hirschman Index,” *Federal Reserve Bulletin* 79 (1993): 188.

⁵⁹ Balunis, and Hemphill, “Congress and Homeland Security,” 111.

In this application, a value of 100 would mean one committee held all of the hearings over an agency, and a value of 25 would mean four committees had an equal number of hearings with agency witnesses.⁶⁰

Interestingly, in the 110th Congress, the most recent Congress for which they presented data, DHS did not have the lowest jurisdictional clarity. It had greater clarity than the Department of Energy in the House and greater clarity than the Department of Defense in the Senate. The authors argued that this was misleading and compared the agencies' jurisdictional clarity in their "infant Congress" (i.e., the first full, two-year Congress after each cabinet department was created). Using the same measurement technique they applied to the 110th Congress, they found DHS did have the lowest level of jurisdictional clarity of the four cabinet departments in their infant congresses. Balunis and Hemphill use these findings to argue that lack of jurisdictional clarity is not just something that all new departments have to suffer through early on, but rather that DHS has an exceptionally low level of jurisdictional clarity relative to other new agencies. They suggest that this will have long-term policy implications for homeland security.

Two masters students at the Naval Postgraduate School, Tapan Sen and Manuel Gonzalez, have also conducted studies of this topic. In his master's thesis, Tapan Sen reviewed the explicit jurisdiction over DHS and compared it to that of the Department of Defense (DOD) and the Intelligence Community.⁶¹ He chronicled the failure of Congress to properly oversee intelligence matters and contrasted it to the more rigorous oversight of the DOD. He acknowledged the sometimes "overbearing" nature of oversight of DOD but noted its relative policy and operational successes.⁶² He concluded that DHS is also at times characterized by "overbearing" oversight, and the continuation of that level of oversight should lead to better policy outcomes despite the administrative burdens.⁶³

⁶⁰ Ibid.

⁶¹ Tapan Sen, "Congressional Oversight of Homeland Security: Help or Hindrance?" (master's thesis, Naval Postgraduate School, 2012), <http://calhoun.nps.edu/public/handle/10945/27903>.

⁶² Ibid., 53–54.

⁶³ Ibid., i.

Manuel Gonzalez also wrote a master's thesis at the Naval Postgraduate School in attempting to answer the question of why DHS has fractured oversight and why Congress has not reformed itself.⁶⁴ He identifies political motivations such as home-state, contracting, and prestige concerns that contribute to a reluctance of members to give up jurisdiction. Moreover, he suggests that committees hold more joint hearings as a solution to the problem of conflicting policy direction that is caused by fractured homeland security oversight.

B. SECONDARY SOURCES

In 2011, Peter May Ashley E. Jochim, and Joshua Sapotichne looked at hearing data and analyzed congressional testimony, not to identify congressional fragmentation, but to assess the homeland security policy regime.⁶⁵ Their analysis indicated that it was “anemic” and suggested that it was “further undermined by congressional institutional misalignment.”⁶⁶ Their analysis utilized the Herfindahl index to determine how concentrated various homeland security policy subsystems were at DHS and to assess the extent of the acceptance of the motivating ideas behind homeland security.⁶⁷

Walter Oleszek of the Congressional Research Service is widely considered an expert on congressional procedure.⁶⁸ Together with Mark Oleszek, he described the history of congressional oversight of DHS.⁶⁹ In their assessment, they detail the explicit jurisdiction and the process by which the rules were changed in early 2005. They provide

⁶⁴ Manuel Gonzalez, “Going beyond the Water’s Edge: Improving Congressional Oversight for the Department of Homeland Security” (master’s thesis, Naval Postgraduate School, 2013).

⁶⁵ May, Jochim, and Sapotichne “Constructing Homeland Security.”

⁶⁶ *Ibid.*, 302.

⁶⁷ *Ibid.*, 299.

⁶⁸ “Walter Oleszek: A Hill Staffer’s Guide to Congressional History and Habit,” *Washington Post*, March 29, 2009, accessed November 17, 2013, http://articles.washingtonpost.com/2009-03-29/politics/36829565_1_congress-works-congressional-operations-congressional-history.

⁶⁹ Mark J. Oleszek, and Walter J. Oleszek, “Institutional Challenges Confronting Congress after 9/11: Partisan Polarization and Effective Oversight,” *Congress and the Politics of National Security*, edited by David P. Auerswald and Colton C. Campbell (Cambridge: Cambridge University Press, 2012), 45–67.

a counter argument for further consolidation and describe the benefit of “creative redundancy.”⁷⁰

In his book, *Turf Wars: How Congressional Committees Claim Jurisdiction*, David King investigates the way the committees system operates and how inter-committee conflict is often working behind the scenes in Congress. Some of the major ongoing conflicts between committees are the decisions by the House and Senate parliamentarians to refer bills to one committee or the other. Where the rules of the House and Senate are silent, the precedent created by past referrals governs. King describes members of Congress and their staff who seek to grow their jurisdiction into new or contested areas of jurisdiction as “policy entrepreneurs.” He argues,

in citing referral precedents, then, policy entrepreneurs present the parliamentarian with their own interpretations of the laws of the House . . . policy entrepreneurs fashion interpretations of referral precedents that are designed to improve their chances of a favorable referral.⁷¹

Therefore, the common law is always changing and new referrals may indicate who actually has jurisdiction over a particular agency or issue.

There have not been any comprehensive reviews published of DHS congressional jurisdiction based on bill referral precedents. The principal reason is that bill referral precedent decisions are opaque to everyone except the House and Senate parliamentarians. King relays a story about bill referrals in *Turf Wars*:

When William Brown was parliamentarian, he kept an old cardboard box next to his desk in H-211 of the Capitol Building. The Box held especially persuasive letters that offered guiding interpretations of referral precedent. When exploring and citing legislative histories, it was the goal of policy entrepreneurs to have their versions of the House rules “accepted” into this worn box of precedents.⁷²

⁷⁰ Ibid., 57.

⁷¹ David C. King, *Turf Wars: How Congressional Committees Claim Jurisdiction* (Chicago, IL: University of Chicago Press, 2008), 107.

⁷² Ibid., 109.

These reviews likely do exist, but they are carefully guarded. Bill referral precedent is mainly of tactical or aspirational importance for the committees trying to gain jurisdiction. If a competing committee learns that another committee is planning to persuade the parliamentarian to establish a bill referral precedent, they may have time to research and establish their own interpretation of the common law. There have been several publications of House precedents, including the magnum opus of Lewis Deschler, which included descriptions of bill referral precedents, but publications of precedents since then have been much less granular.⁷³

The literature is rife with works that quantify, purchased advertisements, and complain about the level of congressional oversight of DHS. There has been some discussion about the impacts the current level of oversight has on homeland security, but it has not been terribly rigorous. Another general commonality in the literature is the respect that people give to the 9/11 Commission recommendation on consolidating congressional oversight of homeland security. Ten years have passed since the recommendation has been made and about nine since the reforms in the House and Senate committee structure, which one could argue partially implemented the recommendation.

⁷³ Lewis Deschler, *Deschler's Precedents* (Washington, DC: Government Printing Office, 1976).

III. HOMELAND SECURITY OVERSIGHT BACKGROUND

A. CONCEPT OF OVERSIGHT

Congress derives its implicit authority to conduct oversight of the executive branch from the U.S. Constitution. From the requirement for Congress to appropriate money before the executive branch can spend it, to the advice and consent given by the U.S. Senate for presidential appointees, the Congress is expected to play a role in running the government beyond simply writing laws.

There are two main schools of thought on how oversight is generally conducted. One is more proactive, constantly following the conduct of the executive branch, which will inform future legislation. The other is to react after the fact to curb excesses in executive branch activity. Matthew McCubbins and Thomas Schwartz described these two general trends as police patrol and fire alarm, respectively. Police patrol calls to mind a cop on the beat who is checking in on residents and shop owners when things are fine, and who develops a close knowledge of the neighborhood and good relationships with those who live and work in it. Fire alarm invokes the image of firefighters responding to a fire and investigating the cause.⁷⁴ Both may be necessary and could work in conjunction; most committees of congress have vested one of their subcommittees with the responsibility of conducting investigations suggesting that the committee's oversight function benefits from police patrol, but also an independent group to respond to fire alarms.

Tappen Sen applied the police patrol and fire alarm models to try to determine which would produce better oversight for the Department of Homeland Security. He determined through case studies that the Department of Defense's oversight is largely characterized by the police patrol model and the intelligence enterprise by the fire alarm model. In addition, he concluded that while the fire alarm model to produce some noteworthy reforms in the Intelligence Community, the police patrol model often

⁷⁴ Mathew D. McCubbins, and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols and Fire Alarms," *American Journal of Political Science* 28, no. 1 (1984): 166.

prevented the Department of Defense from tripping a fire alarm in the first place. Many have argued in the literature that since oversight jurisdiction is split among several committees that inevitably the oversight will be characterized as fire alarm.⁷⁵

It is possible to make a distinction between oversight and legislation, but it is an unnecessary one. This research considers all actions directed toward the executive branch as a form of oversight. In order to determine what the optimal way for Congress to oversee homeland security, it is necessary to be able to measure the current (and past) oversight.

In order to measure more effectively and to have consistency over multiple congresses, this thesis will generally treat subcommittees as part of or the same as their parent committee. With only two notable exceptions,⁷⁶ subcommittees are essentially agents of their parent committees and should not be thought of as separate entities. Subcommittees, their names, chairs and ranking members, and jurisdiction (derived from the parent committee's jurisdiction) change much more frequently than those of the parent committees. Subcommittees are essentially organized for the purpose of better facilitating the work of the full committee. In the House, subcommittee staff are controlled by the chair and ranking member of the full committee and generally share office space with the full committee staff. Senate subcommittees (like senators) have more independence than their House counterparts and control only a few staff. Treating subcommittees as the full committee would make analysis less complex. Those that have invested heavily in the agency interaction model of measuring oversight might object to this simplification. Treating subcommittees as their parent committee would lower the total number of committees, but in doing so it takes a more accurate look at the way Congress conducts oversight.

⁷⁵ Sen, "Congressional Oversight of Homeland Security: Help or Hindrance?"

⁷⁶ Appropriations subcommittees act very similar to full committees in most of their oversight activities. Each subcommittee is aligned in its jurisdiction with its counterpart in the other chamber with the goal of passing one appropriations bill (sometimes one or more supplemental bills as well). The Senate Permanent Subcommittee on Investigations (currently part of the Homeland Security and Governmental Affairs Committee) has broad jurisdiction to investigate without relying on its parent committee for mandate or subpoena power.

The vast majority of interactions between agencies and the Hill come from briefings (informal meetings, generally with committee staff). These meetings are rarely limited to one subcommittee or another, even in the Senate where committees have separate subcommittee staff. Furthermore, it would be extremely rare that there would be disagreement between subcommittees. Chairs and ranking members of full committees often select their subcommittee counterparts because they share a joint vision for that subcommittee's jurisdiction. When disagreements do arise between subcommittees, they are likely to be quickly ironed out by the full committee. In general, there is more disagreement between the minority and majority members and staff than between the subcommittees. This disagreement or differing emphasis likely creates more duplication or burden in oversight than any differences between subcommittees (and possibly between different committees) and yet is rarely addressed in the literature. It also will not be addressed directly in this research, as it is very difficult to find unbiased data sources. It is not necessary to over emphasize the role subcommittees play; however, it makes logical sense that there would be disagreement between rival political parties than between subcommittees that are designated to carry out the work of the full committee.

Most of the literature relies on a single, very narrow use of one method of measurement. This is due, in part, to the fact that it is the simplest way to present the available data and because it presents a compelling argument for many groups' stated goals. However, there are other ways to measure and assess the type of oversight, and it is possible to expand on the agency interaction method to make it more meaningful, as will be shown below.

B. METHODS OF MEASURING OVERSIGHT

The literature identifies three major ways to determine which committees have jurisdiction over an agency: analyze the agency's interactions with the Hill;⁷⁷ survey the rules of the House and Senate to determine which committees have been given explicit

⁷⁷ Hearings are the most formal and visible form of interaction and are generally the basis for agency interaction analyses.

jurisdiction; or review bill referral precedents.⁷⁸ This section will detail these methods by describing the mechanics of each method and reviewing how they have been utilized previously to assess the jurisdiction over DHS.

1. Agency Interaction

As was discussed in the literature review, the 9/11 Commission's recommendation to consolidate oversight popularized the concept of fragmented oversight of DHS. Since the commission used the agency interaction model to assess the fragmented jurisdiction so did most reports. Notable early instances include the CSIS/BENS report that introduced the spider web diagram in Figure 1,⁷⁹ a *Washington Post* op-ed in late 2004,⁸⁰ and an op-ed in the *Baltimore Sun* by 9/11 Commission Chair Kean and Vice Chair Hamilton in June 2005.⁸¹

DHS began reporting on the number of committees exercising jurisdiction over DHS based on OLA's metrics at the conclusion of the 109th Congress.⁸² The method was geared toward updating the numbers used by Brookings Institute, CSIS/BENS, and the 9/11 Commission—that is tallying up how many committees and subcommittees held a hearing with a DHS witness or had a briefing from a DHS official. According to DHS analysis, utilizing the agency interaction method for assessing jurisdiction, the number committees exercising jurisdiction in the 109th Congress was 86, higher than the previous congress based on the CSIS/BENS analysis.⁸³ During the 110th Congress, 108

⁷⁸ The authors suggest a fourth way: Reviewing “budget dollars controlled for component programs and policy areas.” Given the consolidation of the appropriations subcommittees, this method is not particularly relevant to assessing jurisdiction over DHS. Balunis, and Hemphill, “Congress and Homeland Security,” 109.

⁷⁹ CSIS/BENS, *Untangling the Web*.

⁸⁰ “Homeland Security Oversight,” *The Washington Post*, December 28, 2004, sec. A18, <http://www.washingtonpost.com/wp-dyn/articles/A30342-2004Dec27.html>.

⁸¹ Thomas Kean, and Lee Hamilton, “9/11 Panel's Report Must Not Go Unheeded,” *Baltimore Sun*, June 12, 2005, http://articles.baltimoresun.com/2005-06-12/news/0506110167_1_nuclear-material-radio-spectrum-recommendations.

⁸² This is the first full Congress for which records were kept.

⁸³ Office of Legislative Affairs, U.S. Department of Homeland Security, “DHS Congressional Committees: Congressional Committees that have exercised jurisdiction over the Department of Homeland Security in the 109th Congress” (unpublished document, Office of Legislative Affairs, U.S. Department of Homeland Security). Document available from the author upon request.

committees and subcommittees exercised jurisdiction, and by the 112th Congress, it was 119.⁸⁴

The new analysis for the 110th Congress concluded that 108 committees and subcommittees had jurisdiction,⁸⁵ triggering a new round of articles and reports beginning in 2010, including ones by National Public Radio,⁸⁶ the Heritage Foundation,⁸⁷ the Associated Press,⁸⁸ and *Federal News Radio*.⁸⁹ The 9/11 Commission Chair Kean and Vice Chair Hamilton participated two unrelated task forces one in September 2011⁹⁰ and one in September 2013⁹¹ that highlighted the lack of action on the commission's recommendations; the 2013 task force was devoted entirely to congressional oversight reform.

Many of the reviews utilizing the agency interaction method identified the problem in more or less detail but lacked any formal statistical analysis. In 2011, Peter May, Ashley E. Jochim, and Joshua Sapotichne looked at hearing data and analyzed congressional testimony, not to identify congressional fragmentation, but to assess the homeland security policy regime.⁹² Their analysis indicated that it was “anemic,” and suggested that it was “further undermined by congressional institutional misalignment.”⁹³ Moreover, their analysis utilized the Herfindahl index, which is a statistical measure of

⁸⁴ The author is an associate director in the DHS Office of Legislative Affairs. The DHS assistant secretary for legislative affairs has provided access to OLA records to him. Some of this data has previously been provided to journalists, think tanks, and Congress (most extensively in 2007, due to a request from House Committee on Homeland Security Chair Peter King). Additional documentation is available from the author upon request. The level of jurisdiction is calculated by measuring the number of committees and subcommittees that held a hearing with a DHS witness, was provided a briefing by DHS personnel or directed a post-hearing question for the record (QFR) to DHS.

⁸⁵ Office of Legislative Affairs, “DHS Congressional Committees: Congressional.”

⁸⁶ “Who Oversees Homeland Security? Um, Who Doesn’t?,” *National Public Radio*.

⁸⁷ Rosenzweig, McNeill, and Carafano, “Stopping the Chaos.”

⁸⁸ Caldwell, “Inside Washington: DHS Most Overseen Department.”

⁸⁹ Golick, “Former National Security Adviser Calls for Streamlined DHS Oversight.”

⁹⁰ National Security Preparedness Group, *Tenth Anniversary Report Card*.

⁹¹ Task Force, *Streamlining and Consolidating Congressional Oversight*.

⁹² May, Jochim, and Sapotichne, “Constructing Homeland Security.”

⁹³ *Ibid.*, 302.

concentration most known for measuring market concentration when assessing horizontal mergers in banking and industrial markets.⁹⁴ They sought to determine how concentrated various homeland security policy subsystems were at DHS and to assess the extent of the acceptance of the motivating ideas behind homeland security.

In 2012, Balunis and Hemphill applied the Herfindahl index in a different way.⁹⁵ They used it to measure the jurisdictional clarity of DHS and compare it to other cabinet departments.⁹⁶ Based on congressional hearings, they analyzed the concentration of jurisdiction for DHS, the Department of Defense, the Department of Energy, and the Department of Transportation, and they gave each a score of jurisdictional clarity in the House and Senate. Interestingly, in the 110th Congress, the most recent Congress for which they presented data, DHS did not have the lowest jurisdictional clarity. DHS had greater clarity than the Department of Energy in the House and greater clarity than the Department of Defense in the Senate. The authors argued that this was misleading and compared the agencies' jurisdictional clarity in their "infant Congress" (i.e., the first full, two-year Congress after each cabinet department was created). Using the same measurement technique, they applied to the 110th Congress, DHS did have the lowest level of jurisdictional clarity of the four cabinet departments in their infant congresses. Balunis and Hemphill use these findings to argue that lack of jurisdictional clarity is not just something that all new departments have to suffer through early on, but rather that DHS has an exceptionally low level of jurisdictional clarity relative to other new agencies. Furthermore, they suggest that this will have long-term policy implications for homeland security.

The agency interaction method is useful to measuring oversight to a certain degree, but it is generally limited by the availability of data. Hearings are most often used because they are readily available for analysis and because they are public; however, hearings are not the most common agency interactions and, given their public nature,

⁹⁴ Rhoades, "The Herfindahl-Hirschman Index," 188–190.

⁹⁵ Balunis, and Hemphill, "Congress and Homeland Security," 100–120.

⁹⁶ *Ibid.*, 111.

may not be the most influential on policy. Agencies tend to be defensive and well scripted in hearings, and members of Congress have at times been influenced unduly by politics. Some studies have used briefings and other interactions (e.g., letters, post-hearing questions for the record, congressional site visits) to help determine and map the committees that have exercised oversight. However, most agency interaction analyses have been overly simplistic and utilize a binary measure (i.e., if the committee had one interaction it is listed alongside a committee with 600 interactions and a committee exercising oversight over on function of DHS is often shown to appear to be exercising oversight of the entire department). The reasons for doing this appears to be honest enough; it is a complex environment, and researchers and advocates alike were looking for a single metric that would explain the situation.

2. Explicit Jurisdiction

The U.S. House and Senate each have written rules that govern their operations. House Rule X and Senate Rule XXV describe the jurisdiction of each chamber's committees.⁹⁷ Committees are given explicit jurisdiction over specific policy areas and agencies. Therefore, a review of the written jurisdiction in the House and Senate rules provides another method by which to measure the jurisdiction over the elements of DHS. There are gaps and ambiguities, but reviewing the rules alone does allow for a certain level of analysis regarding jurisdiction. For example, oversight of the "organization and administration of the Department of Homeland Security" is specifically granted to the Committee on Homeland Security (CHS).⁹⁸ However, certain functions are excluded from the jurisdiction of CHS (e.g., immigration policy) and certain elements of DHS are

⁹⁷ U.S. House of Representatives, "Rules of the House of Representatives," Government Printing Office, 2013, <http://www.gpo.gov/fdsys/pkg/HMAN-113/html/HMAN-113-pg432.htm>; U.S. Senate, "Standing Rules of the Senate," Government Printing Office, 2011, <http://www.gpo.gov/fdsys/pkg/SMAN-113/html/SMAN-113-pg25.htm>. Senate Committee on Homeland Security and Governmental Affairs jurisdiction over the Department of Homeland Security was agreed to in S Res. 445, 108th Cong. (2004) and can be found in §82 of the "Non-statutory Standing Orders and Regulations Affecting the Business of the Senate," <http://www.gpo.gov/fdsys/pkg/SMAN-113/html/SMAN-113-pg166.htm>.

⁹⁸ U.S. House of Representatives, "House Rule X," *Rules of the House*, Clause (j), §2-3.

specifically provided to other committees (e.g., the Committee on Transportation and Infrastructure has explicit jurisdiction over the Coast Guard).⁹⁹

Some of those that analyze the explicit jurisdiction have come to the conclusion that Congress has established an appropriate level and system of oversight for DHS. The then Chairman of the House Rules Committee, David Dreier, assessed the jurisdiction of DHS in 2005 after the elevation of the Committee on Homeland Security from select to standing status:

It creates a primary committee while recognizing the other legitimate oversight roles of existing committees. We envision a system of *purposeful redundancy* [emphasis added]. By that, we mean more than one level of oversight and an atmosphere in which the competition of ideas is encouraged.¹⁰⁰

Three problems arise when attempting to measure jurisdiction based on the House and Senate rules. First, some committees have jurisdiction over issues across the entire federal government or that are applicable to multiple cabinet departments. For example, the Committee on Small Business has jurisdiction over all agencies' contracting and interactions with small businesses;¹⁰¹ and the House Committees on Armed Services and Veteran Affairs have some jurisdiction over the U.S. Coast Guard.¹⁰² Second, committees have jurisdiction with only potential or tangential relation to DHS. For example, the House Committee on Financial Services has jurisdiction over public housing, which became relevant to DHS only after Hurricane Katrina in 2005.¹⁰³ Third, the imprecision of the terms requires some subjective interpretation and an encyclopedic knowledge of the activities of DHS to know if they would apply.

Much of the scholarly work on this topic has involved some analysis of the House and Senate rules as they apply to committee jurisdiction. For example, Balunis and

⁹⁹ Ibid., Clause (r), §1.

¹⁰⁰ 151 Cong. Rec. H14 (daily ed., Jan. 4, 2005) (remarks of David Drier), quoted in Koempel, *Homeland Security*.

¹⁰¹ U.S. House of Representatives, "Rules of the House of Representatives," Rule X., Clause (q).

¹⁰² Ibid., Clause (c), (s).

¹⁰³ Ibid., Clause (h), § 8.

Hemphill,¹⁰⁴ Tappan Sen,¹⁰⁵ and Walter and Mark Oleszek¹⁰⁶ all use the rules to aid their analysis. They all also used or are aware of the DHS reported figures that utilize the agency interaction method; however, in analyzing the explicit jurisdiction, they end up with more nuanced conclusions than those that just utilize agency interactions.

3. Bill Referral Precedent

The third major way to measure congressional jurisdiction is through the analysis of bill referral precedents. Referral precedent is a kind of common law. It is set when a committee has a bill or other matter referred to it, based on previous similar bills being referred to it or based on the House or Senate parliamentarian's judgment of a committee's explicit jurisdiction in the House and Senate rules. David King's research, while not related to DHS, is good example from the literature on how this analysis is useful.¹⁰⁷ He shows the fluid situation of the jurisdiction based on bill referrals; new referrals may indicate who actually has jurisdiction over a particular agency or issue, even though there are no agency interactions or changes in the rules to measure.

To illustrate how powerful bill referral precedent can be in setting jurisdiction, it was addressed by the speaker of the House of Representatives at the start of the 109th Congress to allay fears of committees competing for jurisdiction of elements of DHS: "The 109th Congress established the Committee on Homeland Security. The Chair would announce that the Speaker's referrals of measures to the Select Committee on Homeland Security of the 108th Congress will not constitute precedent for referrals to the new committee."¹⁰⁸ Because the Select Committee on Homeland Security had at least 40 bills

¹⁰⁴ Balunis, and Hemphill, *Gordium Revisited*; Balunis, and Hemphill, "Congress and Homeland Security," 100–120.

¹⁰⁵ *Ibid.*, 53–54.

¹⁰⁶ Oleszek, and Oleszek, "Institutional Challenges Confronting Congress after 9/11," 45–67.

¹⁰⁷ King, *Turf Wars*, 107.

¹⁰⁸ 151 Cong. Rec, H35 (daily ed., January 4, 2005).

This was an adoption of the recommendations of the Select Committee on Homeland Security in the 108th Congress: "No referrals of legislation, executive communication, or any other action taken in the 108th Congress with regard to the Select Committee on Homeland Security or any other committee of the House shall be considered to be a precedent for referrals of any homeland security-related measures in the current Congress." Quoted in Koempel, *Homeland Security*, Appendix A.

referred to it in the 108th Congress, without the above note from the speaker, the parliamentarian might have seen those bills as a precedent for referring bills on similar topics in the new Congress. The jurisdiction, explicitly provided to CHS in House Rule X, was the subject of heavy negotiations, and parties to those negotiations would not want to see past bill referrals weaken the deal they had just won.

There have not been any comprehensive reviews published of DHS congressional jurisdiction based on bill referral precedent. The principal reason is that bill referral precedent decisions are opaque to everyone except the House and Senate parliamentarians. King relays a story about bill referrals in *Turf Wars*:

When William Brown was parliamentarian, he kept an old cardboard box next to his desk in H-211 of the Capitol Building. The Box held especially persuasive letters that offered guiding interpretations of referral precedent. When exploring and citing legislative histories, it was the goal of policy entrepreneurs to have their versions of the House rules “accepted” into this worn box of precedents.¹⁰⁹

These reviews likely do exist, but they are carefully guarded. Bill referral precedent is mainly of tactical or aspirational importance for the committees trying to gain jurisdiction. If a competing committee learns that another committee is planning to persuade the parliamentarian to establish a bill referral precedent, it may have time to research and establish its own interpretation of the common law. There have been several publications of House Precedents, including the magnum opus of Lewis Deschler, which included descriptions of bill referral precedents, but publications of precedents since then have been much less granular.¹¹⁰

It may not be possible to review bill referral precedent arguments, but it is possible to review bill referrals. Treating legislation as a form of oversight means that analyzing which committees are being referred legislation makes it possible to use bill referrals to measure oversight. Bill referrals allow for both qualitative (e.g., why was that bill referred) and quantitative review analysis (e.g., how many bills were referred to

¹⁰⁹ King, *Turf Wars*, 109.

¹¹⁰ Deschler, *Deschler's Precedents*.

which committees). The weakness in the method is that the rationale for the referral can be hidden, because the parliamentarians do not generally make the reason for their decision known.

Each method of measurement will provide some help in understanding the current state of homeland security oversight and will allow for analysis of the implications of that oversight. Bill referrals and agency interactions will be analyzed on a macro level in Chapter V and all three methods will be used to measure and analyze oversight on two case studies in Chapter IV. The use of multiple methods of measurement will produce a more complete and nuanced view of oversight of homeland security.

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IV. CASE STUDY REVIEWS

As shown in the previous chapter, the literature establishes that there are three major ways to determine which committees have jurisdiction over an agency: analyze the agency's interactions with the Hill; survey the rules of the House and Senate to determine which committees have been given explicit jurisdiction; or review bill referral precedents. This section will apply each of the three methods to the following cases to learn more about how Congress oversees homeland security.

A. UNITED STATES FIRE ADMINISTRATION

The United States Fire Administration (USFA) was created and established in the Commerce Department by Federal Fire Prevention and Control Act of 1974.¹¹¹ In 1979, President Carter moved the USFA to the Federal Emergency Management Agency (FEMA).¹¹² In 2003, USFA was transferred in its entirety to DHS under the Emergency Preparedness and Response Directorate. Then, as part of the Post-Katrina Emergency Management Reform Act, the USFA was sent back to FEMA in 2006.¹¹³

In addition to managing the National Fire Academy, the USFA's principal objective "is to significantly reduce the nation's loss of life from fire, while also achieving a reduction in property loss and non-fatal injury due to fire."¹¹⁴ It does this through data collection, public education, training, and research. USFA has also had a significant role in administering the Assistance to Firefighters Grant (AFG) Program and the related Staffing for Adequate Fire and Emergency Response Grant (SAFER) Program. The grant programs were originally administered directly by USFA but have moved around inside of DHS since 2004; however, "congressional appropriations reports

¹¹¹ Federal Fire Prevention and Control Act of 1974, P.L. 93-498, 93rd Cong. (1974).

¹¹² Lennard G. Kruger, *United States Fire Administration: An Overview* (Washington, DC: Congressional Research Service, 2013), 1.

¹¹³ Post-Katrina Emergency Management Reform Act of 2006, P.L. 109-295, 113th Cong. (2006).

¹¹⁴ Kruger, *United States Fire Administration*, 1.

have consistently instructed DHS to maintain USFA involvement in the grant administration process for AFG and SAFER grants.”¹¹⁵

1. Agency Interaction

A review of hearing data from 2005 through 2012 shows that officials of the U.S. Fire Administration have testified before Congress six times, three of which were confirmation hearings. Additionally, there was a hearing on the Assistance to Firefighters Grant Program with a witness from FEMA’s Grants Program Directorate (see Table 1).¹¹⁶

Measuring jurisdiction based on hearings alone shows that the Science Committee has jurisdiction over USFA in the House and that jurisdiction in the Senate is split between the Homeland Security and Governmental Affairs Committee (HSGAC) and the Commerce Science and Transportation Committee (CS&T). It is possible to make a conclusion regarding jurisdiction over the USFA using hearing data, but given that no committee held more than one hearing on USFA in any Congress during this period, the conclusion is not terribly valid.

Table 1. USFA Hearings 109th–112th Congress

Date	Committee	Hearing Title	DHS Witness
3/15/07	Senate Homeland Security and Governmental Affairs Committee	To Consider the Nomination of Gregory Cade to be the Administrator of the U.S. Fire Administration	Gregory Cade
10/2/07	House Science and Technology Committee Subcommittee on Technology and Innovation	The United States Fire Administration Reauthorization: Addressing the Priorities of the Nation’s Fire Service	USFA Administrator Gregory Cade
7/8/09	House Committee on Science and Technology, Subcommittee on	Assistance to Firefighters Grant (AFG) Reauthorization	FEMA National Preparedness Directorate

¹¹⁵ Ibid., 7.

¹¹⁶ U.S. Department of Homeland Security Office of Legislative Affairs, “Hearing Schedule Outlook,” 109th–112th Cong. Unpublished but available from the author.

Date	Committee	Hearing Title	DHS Witness
	Technology and Innovation		Deputy Administrator Timothy Manning
8/5/09	Senate Committee on Homeland Security and Governmental Affairs	To consider the nomination of Kelvin Cochran to be Administrator, U.S. Fire Administration—FEMA	Kelvin Cochran
12/17/09	Senate Committee on Commerce, Science, and Transportation, Subcommittee on Consumer Protection, Product Safety, and Insurance	Carbon Monoxide Poisoning: Sounding the Alarm on a Silent Killer	U.S. Fire Administrator Kelvin Cochran
10/5/11	Senate Committee on Homeland Security and Governmental Affairs	To consider the nomination of Ernest Mitchell Jr. as FEMA’s U.S. Fire Administration (USFA) Administrator	Ernest Mitchell, Jr.
5/17/12	House Committee on Science, Space, and Technology, Subcommittee on Technology and Innovation	Working for a Fire Safe America: Examining United States Fire Administration Priorities	U.S. Fire Administrator Chief Ernest Mitchell, Jr.

2. Explicit Jurisdiction

A review of House and Senate rules to determine which committee or committees have jurisdiction over the U.S. Fire Administration proved to be inconclusive. Neither set of rules explicitly references USFA, fire protection,¹¹⁷ or firefighters.¹¹⁸ In the House, USFA’s parent agency, the Federal Emergency Management Agency, falls under the jurisdiction of the Committee on Transportation and Infrastructure based on its

¹¹⁷ Except on merchant marine vessels under the jurisdiction of the House Committee on Transportation and Infrastructure.

¹¹⁸ U.S. House of Representatives, “Rules of the House of Representatives;” U.S. Senate, “Standing Rules of the Senate.” Jurisdiction over the Department of Homeland Security was agreed to in S Res. 445, 108th Cong. (2004). “Non-statutory Standing Orders and Regulations Affecting the Business of the Senate,” <http://www.gpo.gov/fdsys/pkg/SMAN-113/html/SMAN-113-pg166.htm>.

jurisdiction related to “federal management of emergencies and natural disasters.”¹¹⁹ However, it could also be argued that CHS has jurisdiction over USFA, owing to its role in overseeing “functions of the Department of Homeland Security relating to . . . domestic preparedness for and collective response to terrorism.”¹²⁰ In the Senate, FEMA falls under the jurisdiction of HSGAC with the exception of “the National Flood Insurance Act of 1968, or functions of the Federal Emergency Management Agency related thereto.”¹²¹ USFA is part of FEMA and has no relation to the National Flood Insurance Program, so it falls under the jurisdiction of HSGAC. It is important to note that this analysis does not align with the view of USFA’s jurisdictional scheme assessed in this thesis using the analysis of its hearing appearances.

3. Bill Referrals

Both the House and Senate have procedures for referring bills to committees that are based on the jurisdiction outlined in House Rule X and Senate Rule XXV.¹²² However, when the substance of the bill is not clearly covered by the delineated jurisdiction of one committee or another, the parliamentarian either refers the bill to whichever committee is most closely associated with the subject unless bills on that or a similar subject have been referred in the past to certain committees. In this case, the parliamentarians rely on bill referral precedents to make decisions over which committee or committees to refer the bill.¹²³

¹¹⁹ U.S. House of Representatives, “Rules of the House of Representatives,” Rule X, Clause (1), § (r).

¹²⁰ *Ibid.*, § (j).

¹²¹ S Res. 445, 108th Cong.; “Non-statutory Standing Orders and Regulations Affecting the Business of the Senate,” <http://www.gpo.gov/fdsys/pkg/SMAN-113/html/SMAN-113-pg166.htm>; U.S. House of Representatives, “Rules of the House of Representatives;” U.S. Senate, “Standing Rules of the Senate.”

¹²² Roger H. Davidson, Walter J. Oleszek, and Thomas Kephart, “One Bill, Many Committees: Multiple Referrals in the U. S. House of Representatives,” *Legislative Studies Quarterly* 13, no. 1 (1988): 3–28; Judy Schneider, *Committee Jurisdiction and Referral in the Senate* (Washington, DC: Congressional Research Service, 2008).

¹²³ Technically, the duty lies with the speaker of the House and the presiding officer of the Senate, but it has been delegated to the respective parliamentarians.

A review of referrals of legislation directly tied to USFA, including the legislation that created it in 1974, shows a third picture of the jurisdiction over the Fire Administration (see Table 2).¹²⁴ The Committee on Science consistently holds jurisdiction over USFA in the House. This can be simply explained by bill referral precedent—the House Committee on Science was referred the original bill in 1973 and all of its reauthorizations since.¹²⁵ If another committee tries to claim jurisdiction over USFA, the Science Committee has a very strong case to make to the parliamentarian on the basis of bill referral precedent. In the Senate, there is a strong precedent of referral to the Senate Commerce Committee through the 108th Congress; however, in the 110th Congress, the parliamentarian began referring USFA authorization bills to HSGAC. The referrals alone do not explain why. Instead, the parliamentarian would have been constrained by Senate Resolution (S. Res.), 445, beginning in the 109th Congress, in determining that USFA and legislation affecting it now fell under the jurisdiction of HSGAC; specific written delineation of jurisdiction overrules bill referral precedent.

Table 2. Bill referrals relating to USFA

Bill Name	Public Law	House Committee Referral	Date	Senate Committee Referral	Date
Federal Fire Prevention and Control Act of 1974	P.L. 93–498	Science and Astronautics	12/17/73	Commerce	5/9/73
Fire Administration Authorization Act of 2000	P.L. 106–503	Science	4/26/99	Commerce, Science and Transportation	5/12/99
United States Fire Administration Reauthorization Act of 2003	P.L. 108–169	Science	7/10/03	Commerce, Science and Transportation	5/23/03
United States Fire Administration Reauthorization Act of 2008	P.L. 110–376	Science and Technology	12/19/07	Homeland Security and Governmental Affairs	4/4/08

¹²⁴ Library of Congress, “Bills, Resolutions,” Thomas, http://thomas.loc.gov/home/bills_res.html. This committee was also called the House Committee on Science from the 104th to 109th Congress, and the House Committee on Science and Technology during the 110th and 111th Congresses.

¹²⁵ Ibid.

Bill Name	Public Law	House Committee Referral	Date	Senate Committee Referral	Date
United States Fire Administration Re-authorization Act of 2012	P.L. 112-239	Science, Space, and Technology	7/30/12	Homeland Security and Governmental Affairs	3/21/12

Combing explicit jurisdiction and bill referrals indicates that in the Senate, CS&T does not have jurisdiction over USFA; however, the review of hearing activity shows that it conducted a hearing with the U.S. fire administrator in 2009. Analysis conducted by DHS would count this interaction as two additional committees of jurisdiction because it would count the parent committee and the subcommittee. The agency interaction method is designed to be objective but it tends inflate the number of committees with jurisdiction. For example, the 2009 hearing on Carbon Monoxide Poisoning: Sounding the Alarm on a Silent Killer is not an oversight hearing over any function of the Department of Homeland Security or even over a homeland security issue. The subcommittee’s invitation of U.S. Fire Administrator Kelvin Cochran would seem to have been made because of his personal expertise regarding the dangers of carbon monoxide and because he represented, on a federal level, firefighters around the country who are involved in keeping the public safe from that danger. The administrator could have declined the invitation, but he did not; perhaps he was thinking about his responsibility “to educate the public and overcome public indifference as to fire, fire prevention, and individual preparedness.”¹²⁶

This is where the concept of homeland security as a multidisciplinary field makes jurisdictional overlap not simply a matter of recalcitrant committee chairmen engaging in dangerous turf battles. Simply because firefighters have a distinct role in homeland security, it does not mean every mission they have is a homeland security mission. Accidental carbon monoxide poisoning is not a homeland security issue, and it would be inefficient for the Homeland Security and Governmental Affairs Committee to use its

¹²⁶ Federal Fire Prevention and Control Act of 1974 as amended, P.L. 93-498, 93rd Cong. (1974).

time considering it; similarly it could be considered a failure of Congress if the Consumer Protection, Product Safety, and Insurance subcommittee did NOT consider it.

In the House, the picture of oversight of USFA is also not immediately clear. Since there is generally no public explanation provided when bills are referred to committees, researchers have limited information available to them in attempting to determine what the jurisdiction of committees is based on.¹²⁷ For instance, the parliamentarian may be swayed by an argument of bill referral precedent or an interpretation of the rules. Additionally, referral could be determined by a formal or informal or ad hoc or permanent agreement between the most likely committees to receive referral.¹²⁸ One example related to USFA is the referral of bills in the House that affect the Assistance to Firefighters Grant Program.

On April 1, 2004, the Assistance to Firefighters Grant Reauthorization Act of 2004 was referred to the House Committee on Science, seemingly in line with their long recognized jurisdiction over the USFA, despite the fact that the administration of the AFG program had recently been transferred to the DHS Office of Domestic Preparedness. Then on May 11, 2004, the Homeland Security Grant Enhancement Act of 2004, which included provisions related to the AFG Program, was referred to the Select Committee on Homeland Security and four other committees, including House Science Committee (presumably because it addressed the AFG program). The Fire Grants Reauthorization Act of 2009 was referred jointly to the House Science and Homeland Security Committees.¹²⁹ Because of the speaker's note at the start of the 109th Congress, we must assume that the 2009 referral to CHS is not because of the precedent of the Homeland Security Grant Enhancement Act of 2004 referral. However, it is not clear if the joint referral was because the House Science Committee asserted its referral

¹²⁷ Some committees publish annual reports describing their legislative work for the session, there is sometimes an accounting of the mechanics of bill referrals in those documents, but they are not a complete justification.

¹²⁸ Schneider, Committee Jurisdiction and Referral in the Senate.

¹²⁹ Library of Congress, "Bills, Resolutions," Thomas, http://thomas.loc.gov/home/bills_res.html

precedent on AFG to the house parliamentarian, who would otherwise have provided referral to CHS because of its delineated jurisdiction, or vice versa.¹³⁰

Oversight of the USFA shows that there are significant historical connections between certain committees and parts of DHS. The fire services and fire science are not necessarily a part of homeland security despite the fact that first responders, particularly those trained to handle hazardous materials, are a vital part of homeland security. While the homeland security committees may want some say in how the USFA prioritizes preparedness for threats to the homeland, they may not be best suited to oversee other missions of the USFA.

B. HURRICANE KATRINA OVERSIGHT

According to the federal government's official lessons learned report, "Hurricane Katrina was the most destructive natural disaster in U.S. history."¹³¹ In addition, it was the most deadly in nearly 80 years, and it was the worst storm since the advent of the Internet, 24-hour cable news, and the creation of the U.S. Department of Homeland Security. The path of the storm was wide, and the flood damage combined with the destructive winds crippled infrastructure on the regional level.¹³² Having avoided any major terrorist attacks or plots since 2001, the all-hazards approach to homeland security was given its first major challenge in responding to Katrina. Congressional oversight of the government's response to Hurricane Katrina was extensive with a high number of hearings and an extremely high amount of legislation introduced.

1. Agency Interaction

Congressional oversight can come in many forms. For example, investigations of incidents of national significance and political scandals are a major activity of Congress and the American public has become familiar with congressional investigations. Often they include or culminate in nationally televised hearings and bring lots of publicity to

¹³⁰ U.S. House of Representatives, "Rules of the House of Representatives," Rule X, Clause 1, § (j).

¹³¹ White House, *The Federal Response to Hurricane Katrina: Lessons Learned* (Washington, DC: White House, 2006), http://www.floods.org/PDF/Katrina_Lessons_Learned_0206.pdf, 5–7.

¹³² *Ibid.*

members on the committees. Congressional hearings on contentious issues have made their way into popular culture. For example, the 1963 hearings by the Senate Permanent Subcommittee on Investigations into the Italian mafia were dramatized in the movie *The Godfather Part II*.

A variety of motivations are likely to lead committee chairs to call a hearing on an issue of national significance: an earnest desire to investigate the circumstances and provide constructive changes to improve the government; political gain by pointing out flaws in an administration of an opposing political party; seeking the spotlight to advance their own careers; or staking a claim on jurisdiction over an issue in competition with other committees. Staking out a claim of jurisdiction is a particularly powerful force in complex issues.¹³³ Committees will explore how the issue under their jurisdiction was impacted, ignored, etc. Hurricane Katrina hit at an unsteady time for oversight jurisdiction in the Congress, and, combined with the other motivations, it can be expected that Katrina brought into full relief all the contours of congressional jurisdiction surrounding it. In this way, looking at the congressional oversight of Katrina is a good case study of jurisdiction in that it drew out all possible committees of oversight. Furthermore, Hurricane Katrina was so destructive that it had ripple effects in many areas of government and serves to highlight the complexity of this area of the homeland security mission.

Hurricane Katrina dominated DHS oversight in the 109th Congress. Even though the hurricane hit almost a third of the way through the Congress, it accounted for over 13 percent of all hearings in the 109th Congress, averaging over a hearing per week. From September 2005 through the end of 2006, DHS provided witnesses to 46 hearings before 14 different committees directly related to Hurricane Katrina or some aspect of the response or recovery.¹³⁴ Table 3 shows the number of hearings by committee.

¹³³ King, *Turf Wars*.

¹³⁴ A full listing derived from DHS's hearing files is in Appendix B.

Table 3. DHS Hurricane Katrina hearings by committee

Committee	Number of Hearings
House Appropriations Committee	1
House Energy & Commerce Committee	2
House Financial Services Committee	5
House Government Reform Committee	3
House Armed Services	1
House Committee on Homeland Security	3
House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina	6
House Committee on Transportation & Infrastructure	3
Senate Appropriations Committee	2
Senate Banking, Housing, & Urban Affairs Committee	2
Senate Commerce, Science & Transportation Committee	1
Senate Homeland Security & Governmental Affairs Committee	15
Senate Small Business & Entrepreneurship	1
Senate Special Committee on Aging	1
Total	46

The hearings listed in Table 3 may not necessarily be all the hearings related to Hurricane Katrina and homeland security; however, the list employs the DHS record criteria, which requires that a hearing include a DHS official as a witness. This threshold provides a standard baseline for measurement and reasonably bounds those hearings that can be considered oversight of homeland security. However, outside of these criteria, there were additional hearings from the committees listed in Table 3 and hearings in other committees directly related to Hurricane Katrina. These included, for example, a March, 2006 hearing of the Committee on Natural Resources, *The Impact of Hurricanes Katrina and Rita on the National Wildlife Refuge System*, that examined the damage to the refuge areas and what the potential costs were, how urgently the damage needed to be addressed

and any regulatory or legislative changes needed.¹³⁵ That hearing did not include a DHS witness and did not *focus* on homeland security issues. However, the topic of wildlife refuge areas, such as wetlands and their properties of “controlling and mitigating floods,” thus protecting coastal communities, were discussed in written testimony. Prevention and mitigation are key homeland security concepts; however, as they relate to protecting people and infrastructure, they were only ancillary topics in this hearing.¹³⁶

While it is clear that several Hurricane Katrina related hearings are not related to DHS activities, it is also reasonable to question whether all DHS functions are homeland security related. Just as reviews of military contracting procedures in a war zone are not necessarily oversight of national security functions, reviews of FEMA contracting practices during hurricane recovery are not necessarily oversight of homeland security. These may more appropriately be considered oversight of government management. The fact that the Senate Homeland Security and Governmental Affairs Committee has jurisdiction over government management generally has likely led to a greater number of DHS witnesses at hearings where the committee is looking at one practice government-wide. Hearings that may appear to be government management oversight may also have a homeland security impact, such as waste, fraud, and abuse of recovery resources impacts the recovery. A pair of HSGAC hearing titles make that argument Hurricane Katrina: Waste, Fraud, and Abuse Worsen the Disaster (March 8, 2006) and FEMA’s Manufactured Housing Program: Haste Makes Waste (April 21, 2006).

Given the way congressional rules divide jurisdiction, the number of hearings is likely lower than it could have been. The magnitude of the disaster, the ineffective federal, state, and local response, and the unprecedented size of the recovery effort needed, led Democrats in the House to seek an independent commission to investigate it. While Congress has the authority and expertise to investigate major incidents, many congressional Democrats felt that with Republicans leading the committee investigations

¹³⁵ *The Impact of Hurricanes Katrina and Rita on the National Wildlife Refuge System: Hearing before the Committee on Natural Resources, Subcommittee on Fisheries and Oceans, United States Senate, 109th Cong. (2006)*, <http://www.gpo.gov/fdsys/pkg/CHRG-109hhr26654/html/CHRG-109hhr26654.htm>.

¹³⁶ *Ibid.*

(by virtue of having majorities in both Houses of Congress in the 109th Congress) would whitewash the inquiry in favor of the Republican administration. Instead, they argued for an independent commission, similar to the 9/11 Commission, which had popular support at the time.¹³⁷ This effort never got off the ground, and, despite the popular support, there was not a natural constituency like the 9/11 Victims' Families to anchor a lobbying effort.¹³⁸ House Republicans responded to the pressure by instead creating a select committee, the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina less than three weeks after the levees were breached.¹³⁹ While “bipartisan” was in the name of the committee, it was created by a largely party line vote 218 to 188.¹⁴⁰ Having sought an investigatory panel independent from the Republican controlled Congress, Democrats largely boycotted the panel (House Democratic Leadership did not appoint any members, but two Democrats whose districts were impacted by the storm were reported to have participated in some proceedings: Gene Taylor of Mississippi and Charlie Melancon of Louisiana).¹⁴¹ One might assume that the House created the select committee because it recognized that oversight was fractured between several committees; however, this does not seem to be the overriding reason. In the floor debate over passing the resolution to create the select committee, there is no mention of the divided or overlapping jurisdiction of the standing committees of the House—rather it is almost entirely focused on whether or not the select committee will provide an adequate level of oversight versus an independent commission.¹⁴²

¹³⁷ Richard Morin, “Bush Approval Rating at All-Time Low,” *The Washington Post*, September 12, 2005, sec. Politics, <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/12/AR2005091201158.html>.

¹³⁸ Philip Shenon, *The Commission: The Uncensored History of the 9/11 Investigation* (New York: Twelve, 2008), 11.

¹³⁹ H. Res. 437. 109th Cong., <https://www.congress.gov/bill/109th-congress/house-resolution/437>

¹⁴⁰ House roll call vote 475 in 109th Cong. “Final Vote Results For Roll Call 475,” accessed February 22, 2015, <http://clerk.house.gov/evs/2005/roll475.xml>.

¹⁴¹ Carl Hulse, “Louisiana Lawmakers Propose \$250 Billion Recovery Package,” *The New York Times*, September 23, 2005, sec. Washington, <http://www.nytimes.com/2005/09/23/politics/23congress.html>.

¹⁴² 151, Cong. Rec., H7965–H8014 (daily ed. September 15, 2005).

At the beginning of the 109th Congress (January 2005), the House amended its rules to create a standing Committee on Homeland Security, in part as a response to the 9/11 Commission's recommendation. At the time and certainly still immediately following Hurricane Katrina, there was dissent over the wisdom of placing FEMA within DHS through the Homeland Security Act of 2002.¹⁴³ Because of this, those that oversaw FEMA in Congress have been reluctant to turn over of jurisdiction to the Committee on Homeland Security. Some have suggested there is a lot of money related to FEMA with disaster assistance payments and the vast majority of DHS's grant dollars.¹⁴⁴ Even without considering the money involved, it would not make sense for a committee chair to allow for jurisdiction of FEMA to move to the Committee on Homeland Security if he or she intended to try to strip it back out of the Homeland Security Department. There is a long history of FEMA being overseen by the House Committee on Transportation and Infrastructure. The rules of the House had just changed in 2005 but some, including the 9/11 commissioners, did not feel that it fully implemented the recommendation. In this way, the select committee actually prevented a fight over jurisdiction. With the select committee in place, there would not to be an effort by any of the three committees most likely to investigate Hurricane Katrina to stake out jurisdiction, which could have increased duplication. Instead, the three competing committees would simply hold a few hearings related to the other aspects of their jurisdiction or long running issues that floated up after the select committee was done. As it was, beginning in 2007, the House Homeland Security Chairman King and DHS Secretary Chertoff began to look at ways to publicize the burden of oversight; without the select committee, that moment could have come sooner.

2. Explicit Jurisdiction

Another method to assess oversight is to review the relevant House and Senate rules and orders that provide explicit jurisdiction. The jurisdiction over Hurricane Katrina

¹⁴³ 151 Cong. Rec. (daily ed. September 15, 2005), H7968 (Rep. Alcee Hastings, Remarks in the House).

¹⁴⁴ Gonzalez, "Going beyond the Water's Edge," 50.

as written in the rules of the House and Senate is complex. The follow-on effects of a storm of that magnitude spread to almost every federal cabinet agency and many sectors of the economy. The scale of the disaster combined with the broad scope of homeland security makes it challenging to review the rules and find clauses that could NOT reasonably connect committees to the disaster and aspects of the disaster to the concept of homeland security. Nominees for Senate-confirmed executive branch positions are asked a question with perhaps unintended consequences: “Do you agree without reservation to respond to any *reasonable* summons to appear and testify before any duly constituted Committee of Congress if you are confirmed [emphasis added]?”¹⁴⁵ To overcome the challenge of how to scope the review of the rules, this review examines the rules of the committees that held hearings with DHS witnesses (see Table 3). Table 4 outlines the clauses of House Rule X and Senate Rule XXV of those committees.

¹⁴⁵ *Nomination of Hon. Michael Chertoff to be Secretary of Homeland Security: Hearing before the Committee on Homeland Security and Governmental Affairs, United States Senate, 109th Cong., 18 (2005), <http://www.gpo.gov/fdsys/pkg/CHRG-109shrg20170/pdf/CHRG-109shrg20170.pdf>.*

Table 4. Committee jurisdiction as provided by House and Senate rules.

House		Notes
Committee	Jurisdiction	
House Select Committee on Katrina	(1) the development, coordination, and execution by local, state, and federal authorities of emergency response plans and other activities in preparation for Hurricane Katrina; and	H. Res 437 109th Congress
	(2) the local, state, and federal government response to Hurricane Katrina.	
Committee on Homeland Security	(1) Overall homeland security policy.	H. Res 437 109th Congress
	(2) Organization and administration of the Department of Homeland Security.	
	Functions of DHS related to: (C) Integration, analysis, and dissemination of homeland security information.	
	(D) Domestic preparedness for and collective response to terrorism.	
	(E) Research and development.	
Committee on Government Reform	(6) Overall economy, efficiency, and management of government operations and activities, including Federal procurement.	
	(11) Relationship of the Federal Government to the States and municipalities generally.	
	(12) Reorganizations in the executive branch of the Government.	
Committee on	(3) Financial aid to commerce and industry (other than	

Financial Services	transportation).
	(4) Insurance generally.
	(8) Public and private housing.
	(10) Urban development.
Transportation and Infrastructure	(1) Coast Guard, including lifesaving service . . .
	(2) Federal management of emergencies and natural disasters.
	(3) Flood control and improvement of rivers and harbors. (4) Inland waterways.
	(14) Oil and other pollution of navigable waters, including inland, coastal, and ocean waters.
	(15) Marine affairs, including coastal zone management, as they relate to oil and other pollution of navigable waters.
	(16) Public buildings and occupied or improved grounds of the United States generally.
	(17) Public works for the benefit of navigation, including bridges and dams (other than international bridges and dams).
	(20) Transportation, including . . . transportation safety (except automobile safety and transportation security functions of the Department of Homeland Security), transportation infrastructure, transportation labor . . .
Energy and Commerce Committee	(14) Regulation of interstate and foreign, communications.
Committee on Appropriations	(1) Appropriation of the revenue for the support of the Government.

House Armed Forces Committee	(2) Common defense generally.	Including the relevant National Guard elements
	(4) The Department of Defense generally, including the Departments of the Army, Navy, and Air Force, generally.	
Senate		Notes
Committee	Jurisdiction	
Homeland Security and Governmental Affairs	Matters relating to the . . .(1) Department of Homeland Security, except matters relating to, the Coast Guard . . . [or] the National Flood Insurance Act of 1968 or functions of the Federal Emergency Management Agency related thereto.	Standing orders of the Senate Sec. 82
	(2)(B) Studying the efficiency, economy, and effectiveness of all agencies and departments of the Government;	
Special Committee on Aging	(b)(1)Any and all matters pertaining to problems and opportunities of older people	Standing orders of the Senate Sec. 83.1
Banking Housing and Urban Affairs Committee	8. Financial aid to commerce and industry.	
	12. Public and private housing (including veterans housing).	
	14. Urban development and urban mass transit.	
Appropriations Committee	1. Appropriation of the revenue for the support of the Government	

Commerce Science and Transportation Committee	1. Coast Guard.
	3. Communications.
Small Business and Entrepreneurship	(b) Study and survey by means of research and investigation all problems of American small business enterprises

The Select Committee in the House has the most obvious and clear authority to investigate the disaster. While jurisdiction over “Federal Management of Emergencies and Natural Disasters” is given to the House Transportation and Infrastructure Committee, this does not preclude other committees from conducting oversight of various aspects of the disaster. Congressional committee jurisdiction is often not mutually exclusive; it is explicit but not unambiguous. There was some overlap in the case of Hurricane Katrina oversight. In the House, two committees used their jurisdiction to hold hearings on federal contracting in the recovery, two committees held hearings generally on *waste, fraud, and abuse*, and two committees held hearings on interoperable communications. Reviewing the 46 hearings alongside the House and Senate rules shows that the committees did not generally stray from their jurisdiction. For example, the House Financial Services Committee only held hearings on the Flood Insurance Program and housing issues (see Table 5), which was in line with their jurisdiction as provided by the House rules.

Table 5. Hearings related to Hurricane Katrina held by the House Committee on Financial Services 2005–2006

Date	Hearing Title or Subject	DHS Witness
10/20/05	Management and Oversight of the National Flood Insurance Program	David Maurstad, EP&R
12/8/05	Katrina Housing	David Garratt, Acting Director Recovery Division FEMA
3/9/06	Gulf Coast Rebuilding	Don Powell, Hurricane Czar (Federal Reconstruction Coordinator)
1/14/06	Field hearing entitled “Housing Options in the Aftermath of Hurricanes Katrina and Rita.”	Mr. James N. (Nick) Russo, FCO, FEMA DHS
1/13/06	Housing needs in the aftermath of hurricanes Katrina and Rita and	Scott Wells, Federal Coordinating Officer for DR- 1603-LA, FEMA

Date	Hearing Title or Subject	DHS Witness
	various options available for reconstruction	

The only reason it is accurate to say that the House Committee on Financial Services has jurisdiction over DHS is because the flood insurance program and disaster related housing were made part of DHS in the Homeland Security Act of 2002 when FEMA was transferred to DHS. In that government reorganization, disaster housing and rebuilding could just as logically have been transferred to the Department of Housing and Urban Development (HUD), which is a partner with FEMA on housing issues and whose officials testified on Katrina rebuilding multiple times before the House Financial Services Committee during this same period. The Flood Insurance Program, which was established in 1968 within HUD and transferred to FEMA in 1979, could have been transferred back to HUD or to the Treasury Department, which oversees many insurance programs, including one associated with homeland security (the Terrorism Risk Insurance Program). Recovery from a disaster is certainly a homeland security function, but the Flood Insurance Program may not be. FEMA and HUD split responsibilities on housing after a disaster (and insuring against floods), and it seems to make sense for FEMA to have some role in housing, particularly to meet immediate needs, but the division of those efforts could be made in any number of ways that make sense or drive efficiencies. However, it does not necessarily make sense to divide oversight of those issues between congressional committees.

In fact, when transferring jurisdiction of FEMA to the Homeland Security and Governmental Affairs Committee, the Senate specifically excluded the National Flood Insurance Program from HSGAC's oversight, leaving it with the Senate Banking, Housing, and Urban Affairs Committee. Housing and insurance issues are very different from homeland security issues. The 9/11 Commission envisioned the homeland security committees as having professional staffs with expertise in homeland security. If the homeland security committees were given jurisdiction over flood insurance or housing

generally, either they would do a poor job overseeing the technical aspects of those issues, or they would need to transfer resources away from homeland security.

It is possible to learn something from the fact that the House Energy and Commerce Committee held a hearing, entitled “Guarding against Waste, Fraud, and Abuse in Post-Katrina Relief and Recovery: The Plans of Inspectors General,” at which DHS Inspector General Richard Skinner testified. The committee only has jurisdiction over DHS as it applies to communications. Nevertheless, the committee held a general oversight hearing regarding government spending with a DHS witness. This is illustrative of a larger phenomenon: invitations to testify are not necessarily turned down due to lack of jurisdiction. While TSA notably refused to testify before the House Transportation and Infrastructure Committee, other DHS components have yet to be so bold.¹⁴⁶ In the case of the House Energy and Commerce Katrina Hearing, the chair even recognized that DHS is outside the committee’s “core jurisdiction.”¹⁴⁷

Inspectors general (IG) and other oversight officials have a special relationship with Congress. Often, they provide draft reports to Congress and coordinate the release of their reports with Congress to provide mutually beneficial press coverage. For the members of Congress this relationship is an opportunity to be independently validated in pointing out scandal. While good executive branch leaders attempt to cultivate strong relationships on the Hill, a strong trusting relationship based on integrity is critical to success as an IG. The counterpoint to this was the scandal caused by DHS acting Inspector General Chuck Edwards over accusations that he had personal ethical issues

¹⁴⁶ Andrea Stone, “John Mica Has No Legal Power over TSA, but Pushes the Jurisdictional Boundaries,” *Huffington Post*, October, 10, 2011, http://www.huffingtonpost.com/2011/10/29/john-mica-tsa_n_1064438.html.

¹⁴⁷ *Guarding against Waste, Fraud, and Abuse in Post-Katrina Relief and Recovery: The Plans of Inspectors General: Hearing Before the Committee on Energy and Commerce, United States House of Representatives*, 109th Cong. (2005), <http://www.gpo.gov/fdsys/pkg/CHRG-109hhr24250/html/CHRG-109hhr24250.htm>.

and collaborated with politically appointees at DHS on some matters in a bid to become the permanent IG.¹⁴⁸

If an IG is not seen as having uncompromising integrity and is not responsive to Congress and the theatrics of hearings, he or she is unlikely to be effective. By agreeing to participate in a hearing outside the “core jurisdiction” of the Committee on Energy and Commerce, Richard Skinner was paying the committee a courtesy it was not entitled to, and he was also participating in a show with mutually beneficial publicity for the members of Congress and the work of his office. This is not a bad thing, but it may be indicative of many hearings in which DHS witnesses participate. Very rarely do DHS officials refuse to participate in hearings because of lack of jurisdiction. The risks of alienating a committee or a powerful member are likely too great. Additionally, since jurisdiction is rarely black and white, nearly every committee of Congress could find something within its jurisdiction to get some piece of DHS; very few would be in their “core jurisdiction,” but this begins to look more and more like a product of the breadth of the DHS mission set, rather than a flaw in the way Congress is organized.

3. Bill Referrals

The last method to review oversight in this case study is to review how bills are referred to various committees. As was identified in the last section, in some cases it is clear from the rules that bills pertaining to certain subjects are referred to specific committees; in other cases, the parliamentarian makes a determination based on the contents of the bill, or a previously established precedent is used. For example, a plain language reading of the rules of the Senate does not provide jurisdiction over flood insurance to the Senate Banking Committee; however, through bill referral precedent, flood insurance is firmly within its jurisdiction. Furthermore, the same bill can be referred to more than one committee, either because the bill includes multiple unrelated or loosely related issues or because the issue crosses jurisdictional lines. The Library of

¹⁴⁸ Carol D. Leonnig, “Probe: DHS Watchdog Cozy with Officials, Altered Reports as He Sought Top Job,” *The Washington Post*, April 23, 2014, http://www.washingtonpost.com/politics/probe-dhs-watchdog-cozy-with-officials-altered-reports-as-he-sought-top-job/2014/04/23/b46a9366-c6ef-11e3-9f37-7ce307c56815_story.html.

Congress maintains records of all bills and resolutions introduced in Congress and assigns each bill one of 33 policy area terms.¹⁴⁹ There were 264 bills or resolutions introduced in the 109th Congress that were tagged with the subject *emergency management*.¹⁵⁰ In addition, 213 were introduced after August 23, 2005. In the previous 10 congresses, there were never more than 90 *emergency management* bills or resolutions introduced; the average per Congress was 41.7 bills and resolutions. As such, it is fair to assume that most of the bills in this group were in reaction to Hurricane Katrina (see Table 6).

Table 6. Number and percentage of referrals of *emergency management* bills and resolutions introduced by committee, 109th Congress

House Committee	Number of Referrals	Percentage
Transportation and Infrastructure	92	31.3%
Homeland Security	60	20.4%
Energy and Commerce	38	12.9%
Financial Services	17	5.8%
Judiciary	11	3.7%
Oversight and Government Reform	11	3.7%
Ways and Means	11	3.7%
Science, Space, and Technology	10	3.4%
Education and the Workforce	8	2.7%
Budget	6	2.0%
Natural Resources	6	2.0%
Agriculture	5	1.7%
Intelligence (Permanent)	5	1.7%
Armed Services	3	1.0%
Foreign Affairs	3	1.0%
Small Business	3	1.0%

¹⁴⁹ *Congress.gov Glossary*, s.v., “policy area term,” <https://www.congress.gov/help/legislative-glossary#p>.

¹⁵⁰ *Congress.gov Glossary*, s.v., “emergency management,” <https://www.congress.gov/search?q=%7B%22source%22%3A%22legislation%22%2C%22congress%22%3A%22109%22%2C%22subject%22%3A%22Emergency+Management%22%7D>.

Appropriations	2	0.7%
Rules	2	0.7%
House Administration	1	0.3%
Total House	294	100.0%
Senate Committee	Number of Referrals	Percentage
Homeland Security and Governmental Affairs	73	69.5%
Commerce, Science, and Transportation	7	6.7%
Banking, Housing, and Urban Affairs	6	5.7%
Environment and Public Works	5	4.8%
Judiciary	4	3.8%
Energy and Natural Resources	3	2.9%
Finance	3	2.9%
Appropriations	2	1.9%
Foreign Relations	1	1.0%
Health, Education, Labor, and Pensions	1	1.0%
Total Senate	105	100.0%

Table 6 shows a similar picture of the fault lines of Hurricane Katrina oversight when compared to the agency interaction analysis. In the Senate, the Homeland Security and Governmental Affairs Committee dominates, while in the House, there is a distribution mainly across four committees. Since the House Select Committee had no legislative authority, analyzing bill referrals shows the relative share of jurisdiction of the committees in the House that cannot be clearly seen by looking at hearings, and this removes any impact that there might be from agencies attending hearings as a courtesy. The use of aggregated data on bills has certain limitations. For instance, the distribution of bill referrals is based on how many of each kind of bill are introduced. That is, if a flood of different bills is introduced to make minor changes to the Flood Insurance Program, but there is only one consensus bill introduced that reorganizes emergency management within FEMA and DHS, the Banking/Financial Services committees may appear to have a larger share of emergency management oversight. It is possible to screen the data for noise caused by minor or unpopular bills by looking at which bills passed one

or both houses of congress. Twenty-five *emergency management* bills passed one or both houses of the 109th Congress (see Table 7). While the smaller sample of data is not as useful, it does help us confirm the previous result.

Table 7. Number and percentage of referrals of *emergency management* passed bills and resolutions by committee, 109th Congress

House Committee	Bills Referred	Percent
Transportation and Infrastructure	9	26.5%
Homeland Security	5	14.7%
Judiciary	4	11.8%
Science, Space, and Technology	4	11.8%
Energy and Commerce	3	8.8%
Financial Services	2	5.9%
Ways and Means	2	5.9%
Appropriations	2	5.9%
Oversight and Government Reform	1	2.9%
Education and the Workforce	1	2.9%
Intelligence (Permanent)	1	2.9%
Budget		0.0%
Natural Resources		0.0%
Agriculture		0.0%
Armed Services		0.0%
Foreign Affairs		0.0%
Small Business		0.0%
Rules		0.0%
House Administration		0.0%
<i>Total House</i>	34	100.0%
Senate Committee	Bills Referred	Percent
Homeland Security and Governmental Affairs	8	53.3%
Commerce, Science, and Transportation	2	13.3%
Appropriations	2	13.3%
Banking, Housing, and Urban Affairs	1	6.7%
Judiciary	1	6.7%
Health, Education, Labor, and Pensions	1	6.7%
Environment and Public Works		0.0%
Energy and Natural Resources		0.0%
Finance		0.0%
Foreign Relations		0.0%
<i>Total Senate</i>	15	100.0%

In the House, Transportation and Infrastructure and Homeland Security are still the top two committees receiving referred bills, and the Energy and Commerce and Financial Services slip down a bit compared to bills introduced. In the Senate, the top three are in the same order, except the Senate passed both bills that were introduced and referred to the Appropriations Committee, so it moves up the list considerably. Using only passed bills provides a much narrower view of jurisdiction, but it confirms that there is no major impact on the previous results from legislative noise.

This case study of the oversight of Hurricane Katrina demonstrates the complexity of homeland security, which is intensified by a lack of consensus of what homeland security is. In reviewing this case nearly 10 years later, it becomes clear just how much consensus has been built for response and recovery from natural disasters to be part of homeland security alongside counterterrorism. This may be in part due to better results from federal emergency managers that show DHS is willing to give just as much priority to both missions. In late 2005, it was far from clear that FEMA would remain a part of DHS, and the concept of homeland security may have reverted to a predominantly counterterrorism and border security mission in the minds of policy makers.

Even with a consensus that emergency management is a key part of homeland security, there are many functions of DHS which are not. Flood insurance and housing were highlighted in this case study. When one inquires why a non-homeland security committee has a DHS witness present for a hearing or has had a bill referred to it, there seem to be two common reasons. First, that homeland security oversight was left in the jurisdiction of another committee in the sausage-making process of writing congressional rules; or two, those committees are exercising oversight over a loosely associated or non-homeland security function of DHS. The agency interaction method, particularly when the interactions are not analyzed individually or are not given weight for how often they occurred, tends to overlook the fact that DHS has non-homeland security functions. This understanding that functions can be combined together in the executive branch for efficiency (FEMA derives ancillary benefits in its response mission from the flood plain maps that inform the Flood Insurance Program), but that oversight of those functions may be combined in different ways, also for efficiency, is lacking in the literature.

These two case studies also showed the value in exploring bill referrals further. One of the weaknesses of the agency interaction method, when using only hearings, is the small sample size. The second case study looked at 46 hearings versus 264 *emergency management* bills and resolutions in the 109th Congress. The next chapter includes a larger examination of bill referrals as well as an examination of agency interactions, which looks at a larger sample by using more than hearing interactions.

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V. QUANTITATIVE DATA

The case studies in the preceding chapter showed that there are two methods of measurement that lend themselves to quantitative analysis. The third, explicit jurisdiction, is much more opaque and while it does provide valuable insight in smaller cases, it would be difficult to analyze quantitatively. In the previous chapter, the U.S. Fire Administration case study showed that bill referrals are at times murky, and at other times, useful for analysis. The Hurricane Katrina case study showed that in the aggregate, bill referrals could provide additional insight into trends. In this chapter, the first section will look at trends in legislation related to homeland security and, specifically, the Department of Homeland Security in relation to general trends for all bills. It will identify a previously undocumented barrier to passage for homeland security legislation.

The second section of this chapter will take a new approach to quantitatively analyzing agency interaction data. Agency interaction is by far the most common method used in quantitative analysis in the literature and the case studies identified significant limitations to how it has been used in the past.¹⁵¹ However, to counteract those limitations, the second section of this chapter will analyze a much larger sample of agency interaction data than previous efforts by utilizing briefing data that accounts for nearly 90 percent of all documented agency interactions with Congress. Additionally, that data has been converted into relational tables that remove some of the limitations of using aggregate agency interaction data. The result is a new visualization of homeland security oversight that starkly contrasts with previous images.

A. THE IMPACT OF MULTIPLE REFERRALS ON HOMELAND SECURITY

The most salient complaint about the current state of oversight of homeland security has been the difficulty in passing necessary legislation—of particular note a

¹⁵¹ Furthermore, in most cases that analysis has not been particularly deep or rigorous even with the limitations of the method. The most notable exceptions are recent releases from the DHS Office of Legislative Affairs that show the magnitude of agency interactions and Balunis and Hemphill's use of the Herfindahl index to show relative fragmentation of oversight of several cabinet agencies.

reauthorization of DHS. It can be argued that the burden of responding to oversight can be absorbed by a large bureaucracy and the executive branch can provide its own leadership on policy, but the homeland security enterprise needs changes in statute from time to time to face evolving threats and circumstances. Congressional researchers Roger Davidson, Walter Oleszek, and Thomas Kephart noted complaints from members of Congress that a new development would “promote jurisdictional rivalry; produce duplication in hearings, meetings and reports; encourage delays in the legislative process; and give new weapons to groups determined to delay, modify, or kill legislation.”¹⁵² The new development they were writing about in 1988 was the 1975 change in House rules to allow bills to be referred to more than one committee. Some of these complaints were supported by facts—particularly that multiply-referred bills have less success in gaining passage than ones referred to a single committee. That some of the same complaints about oversight of homeland security mirror complaints about multiple referrals necessitates a review of how multiple referrals operate and how legislation has a greater chance of success with multiple referral rules in place.

The referral of bills is solely within the discretion of the speaker of the House and presiding officer of the Senate, but it is generally delegated to the House and Senate parliamentarians. Absent outside factors, such as agreement between chairmen, referral decisions are made based on the rules of each chamber and precedent. Prior to 1975 in the House and 1946 in the Senate, bills introduced in that chamber or transmitted from the other chamber after passage would only be referred to one committee based on the preponderance of the subject matter. With the availability of rules that allow for bills to be referred to multiple committees, bills can be referred to as many committees as necessary if there are competing claims on jurisdiction or if there are topics covered in the same bill that would have been referred to multiple committees had they been addressed in separate bills. Bills can be referred jointly, sequentially, or split. Jointly referred bills are sent to each committee at the same time for each committee to amend and report out; all committees must take action for the bill to move forward. Bills that are

¹⁵² Davidson, Oleszek, and Kephart, “One Bill, Many Committees,” 22.

referred sequentially go to one committee for action first, and after that committee takes action, they are then referred in a predetermined sequence to the other committees for their subsequent action. Generally, under sequential referral, each committee has a set amount of time to accomplish its work or it loses the opportunity to take committee action. Split referrals, allowed in the House but not the Senate, refer specific titles or sections to two or more committees but are rarely used because not all bills easily divide into chapters.¹⁵³

Davidson, Oleszek, and Kephart studied the impacts of multiple referral rules in 1988. They found that bills introduced and “sent to a single committee had nearly twice the chance of being passed as a measure sent to two or more committees.”¹⁵⁴ Their research identified the ratio of multiply-referred measures that are referred to two (80.5 percent), three (14 percent), and four or more (5.5 percent) committees in the 99th Congress. Using that ratio, counting bills referred to more than four committees as only four committees, and applying it to information from Congress.gov it can be extrapolated that during the 94th-99th congresses, that 11.1 percent of bills introduced in the House were referred to more than one committee, and yet only 7.2 percent of those bills passed the House. The difference in the expected outcomes of multiply-referred bills is 3.9 percentage points; this figure can be considered the barrier to passage of multiple referral.¹⁵⁵ The exception to the multiple referral barrier to passage are sequentially referred bills, of which there are relatively few. In the 99th Congress:

¹⁵³ Ibid., 6.

¹⁵⁴ Ibid., 23. They included all measures referred to a committee, which includes resolutions, which are largely ceremonial and which only ~3.5 percent were referred to more than one committee in the 113th Congress.

¹⁵⁵ Data on Congress.gov is not aggregated in a way to show how many bills have multiple referrals. It does show the number of bills and the number of referrals by committee. For example, if there are 10 bills introduced and all the committees have 15 referrals total, there are five more referrals than bills, meaning at least five of the bills were referred to exactly one committee and the other five could have been referred to two committees each or an additional four bills were also referred to one committee each, and the tenth bill was referred to six committees. Applying the ratio derived from Davidson, Oleszek, and Kephart’s research allows us to approximate the number of multiply-referred bills with the following equation: (Referrals - Bills)=0.805x+(0.14*2x)+(0.055*3x). Solving for x determines the approximate number of bills referred to more than one committee. Solution reviewed by Joel Barnes, PhD, Mathematics, University of Washington, 2014.

[a]ll but two of the 58 measures referred sequentially to two or more committees were in fact reported by the relevant committees. Six out of every ten of these measures were ultimately passed on the House floor. Time limits for sequential referrals often have the effect of expediting the legislative process.¹⁵⁶

The barrier to passage of multiple referral is stronger in the 113th Congress than in the 1980s. Using the same ratio of the number of committees involved in multiple referrals (80.5%/14%/5.5%) that Davidson, Oleszek and Kephart identified, 32.9 percent of bills were referred to more than one committee in the House in the 113th Congress. However, only 23.8 percent of bills that passed the House were referred to more than one committee; a barrier to passage of 9.1 percentage points. Both the prevalence of multiple referrals and the barrier to passage have increased nearly threefold.

Compared to all bills introduced in the House in the 113th Congress, homeland security related bills that are multiply-referred have an even stronger barrier to passage. Bills in the *emergency management* policy area had a 13.7 point barrier to passage from multiple referrals. Furthermore, 72.9 percent of the 282 bills with the organization subject *Department of Homeland Security* were referred to multiple committees in the 113th Congress; only 33.1 percent passed the House, resulting in a 39.8 point barrier to passage from multiple referrals.¹⁵⁷ However, there is something skewing this data. Davidson, Oleszek, and Kephart poignantly note that “Members introduce measures for various reasons; inaction may be the preferred outcome.”¹⁵⁸ Of late, there has been a fraught conversation over immigration reform. In the 113th Congress, the Senate passed a bipartisan, comprehensive, immigration reform bill. The House did not take up the Senate passed measure, but instead it introduced 139 bills in the *immigration* legislative policy

¹⁵⁶ Davidson, Oleszek, and Kephart, “One Bill, Many Committees,” 24.

¹⁵⁷ The Library of Congress describes the different types of subject tags in its databases: “The policy area term vocabulary consists of 33 legislative policy areas. One term, which best describes an entire measure, is assigned to every bill or resolution. The policy area term vocabulary is consistently used for all bills and resolutions introduced since 1973 (93rd Congress).” *Congress.gov Glossary*, s.v., “policy area term.” Also according to the Library of Congress, “The legislative subject term vocabulary consists of approximately 1,000 subject terms, geographic entities, and organization names. Multiple terms may be assigned to describe a measure’s substance and effects. The legislative subject term vocabulary is consistently used for all bills and resolutions introduced since 2009 (111th Congress).” *Congress.gov Glossary*, s.v., “legislative subject term.”

¹⁵⁸ Davidson, Oleszek, and Kephart, “One Bill, Many Committees,” 17.

area; only four passed the House. Furthermore, 61 ones of those measures were also tagged with the organization subject name “Department of Homeland Security,” of which 30 were referred to more than one committee and only one (a singly-referred measure) passed the house. Controlling for this by removing *immigration* policy area bills, the barrier to passage of multiply-referred bills drops from 39.8 points to 27.8 points. This is still three times the barrier to passage of all House bills in the 113th Congress.

This is a demonstrable impact on homeland security legislation; while other studies have raised anecdotal cases, the legislative data proves that homeland security bills fare worse than the average bill. The 113th Congress narrowly avoided the title of “least productive” Congress in terms of substantive matters passed into law but only because the 112th was slightly less productive.¹⁵⁹ Changing the way multiple referrals work in certain ways would lower the barrier to passage for all bills, and it could have a disparately positive impact on the chances of passage for homeland security related bills.

B. A NEW APPROACH TO VISUALIZING HOMELAND SECURITY OVERSIGHT

Agency interaction is a very important method of measurement for research. Either a meeting occurred or it did not. As the case studies in the previous chapter showed, analysis of agency interactions does contribute to the overall picture of jurisdiction, especially when examining the hearing records for the title or the transcript to know what the DHS officials were discussing with Congress. Agency interaction analysis loses much of this benefit when aggregated and used as a binary measure of jurisdiction—that is counting a committee with one hearing or briefing the same as one with 600 briefings and hearings. Additionally, it is misleading to suggest a committee or any of its subcommittees has jurisdiction over the entirety DHS when it only has jurisdiction over a small part. These downsides can be mitigated to some degree by increasing the sample size and paying attention to magnitude. There have been several

¹⁵⁹ Drew DeSilver, “In Late Spurt of Activity, Congress Avoids ‘Least Productive’ Title,” Pew Research Center FactTank, December 29, 2014, <http://www.pewresearch.org/fact-tank/2014/12/29/in-late-spurt-of-activity-congress-avoids-least-productive-title/>.

efforts to visually demonstrate homeland security oversight; however, they generally fail to create a nuanced view (see Figure 2 and Figure 3).

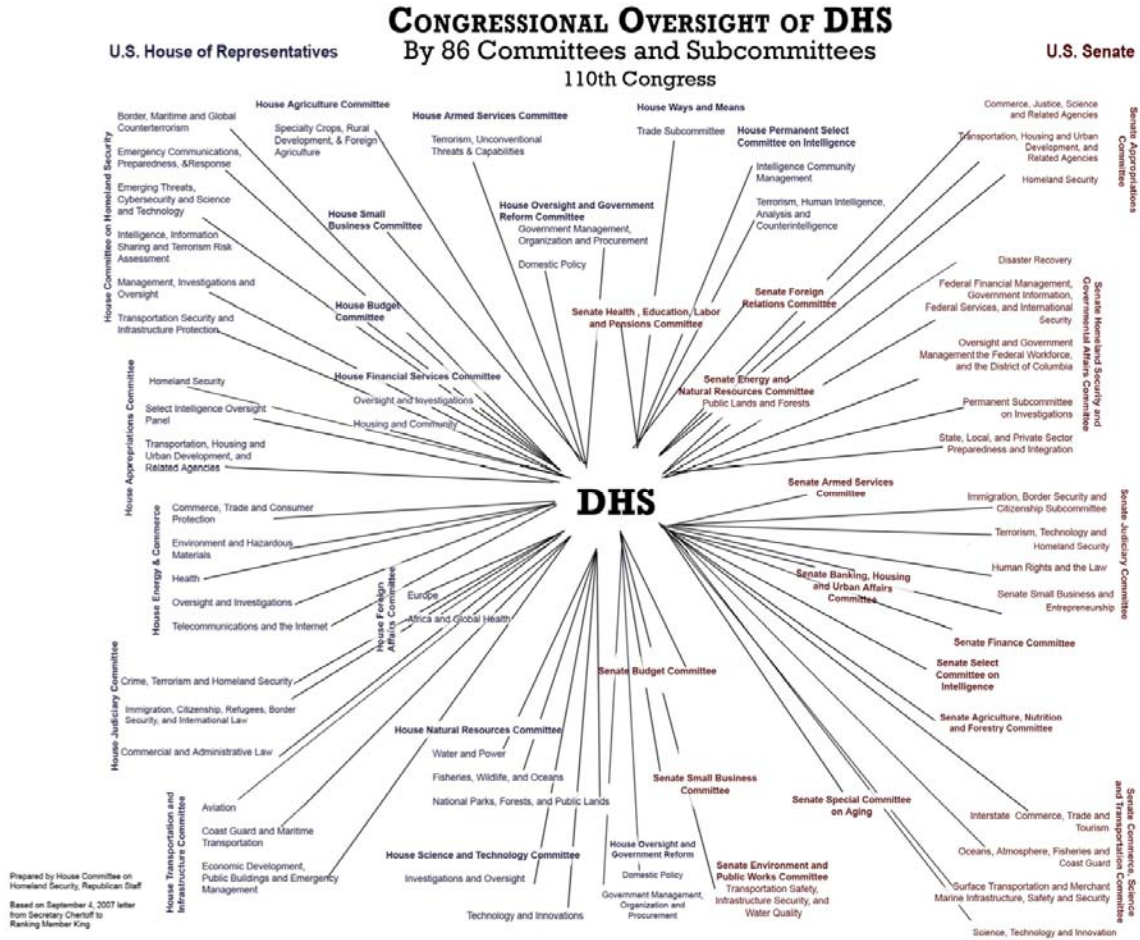


Figure 2. Congressional oversight of DHS¹⁶⁰

¹⁶⁰ Laskow, "Is Congress Failing on Homeland Security Oversight?"

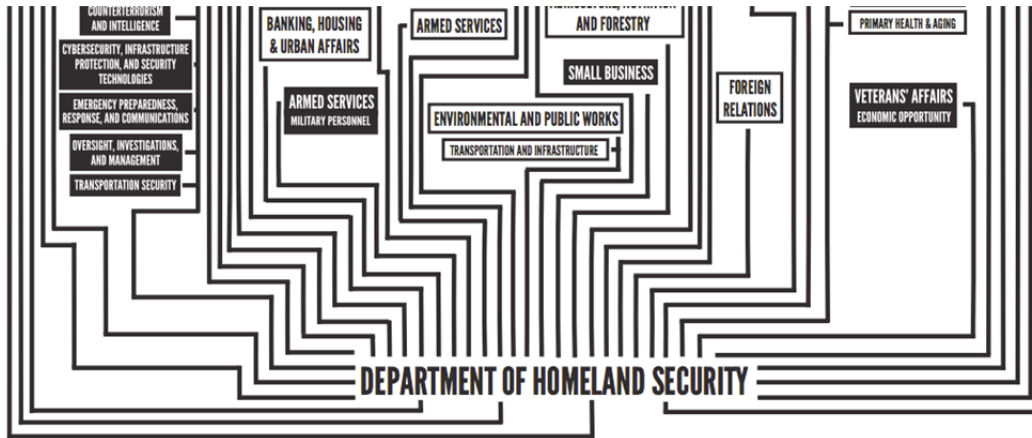


Figure 3. DHS wire diagram¹⁶¹

Both Figure 2 and Figure 3 are certainly designed to convince the observer that homeland security oversight is complex and fractured; however, they fail to show the magnitude of the committees' interactions and thus do not show the true complexity of the issue. The CSIS/BENS research (see Figure 4) attempted to show the nuance of oversight with its spider web chart. In part, it overcomes two of three major challenges. It has increased the sample size by including non-hearing engagements (although this may have been done simply to artificially increase the number of entities on the chart), and it also shows the links between the individual committees and components of DHS. It is lacking any display of magnitude and as such makes all committees seem of equal importance. This chart could be greatly improved by showing some degree of magnitude. Also the use of subcommittees makes this chart needlessly confusing. As has been previously discussed, subcommittees do delegated work from the full committee and in the House they even share staff. When using briefings and other non-hearing engagements, even in the Senate, it is generally not possible to distinguish between subcommittees.

¹⁶¹ Annenberg Public Policy Center of the University of Pennsylvania, *Ten Years Ago, the 9/11 Commission Urged Congress to Simplify Oversight of Homeland Security* (Philadelphia: Annenberg Public Policy Center of the University of Pennsylvania, 2014), <http://www.annenbergpublicpolicycenter.org/security/>.

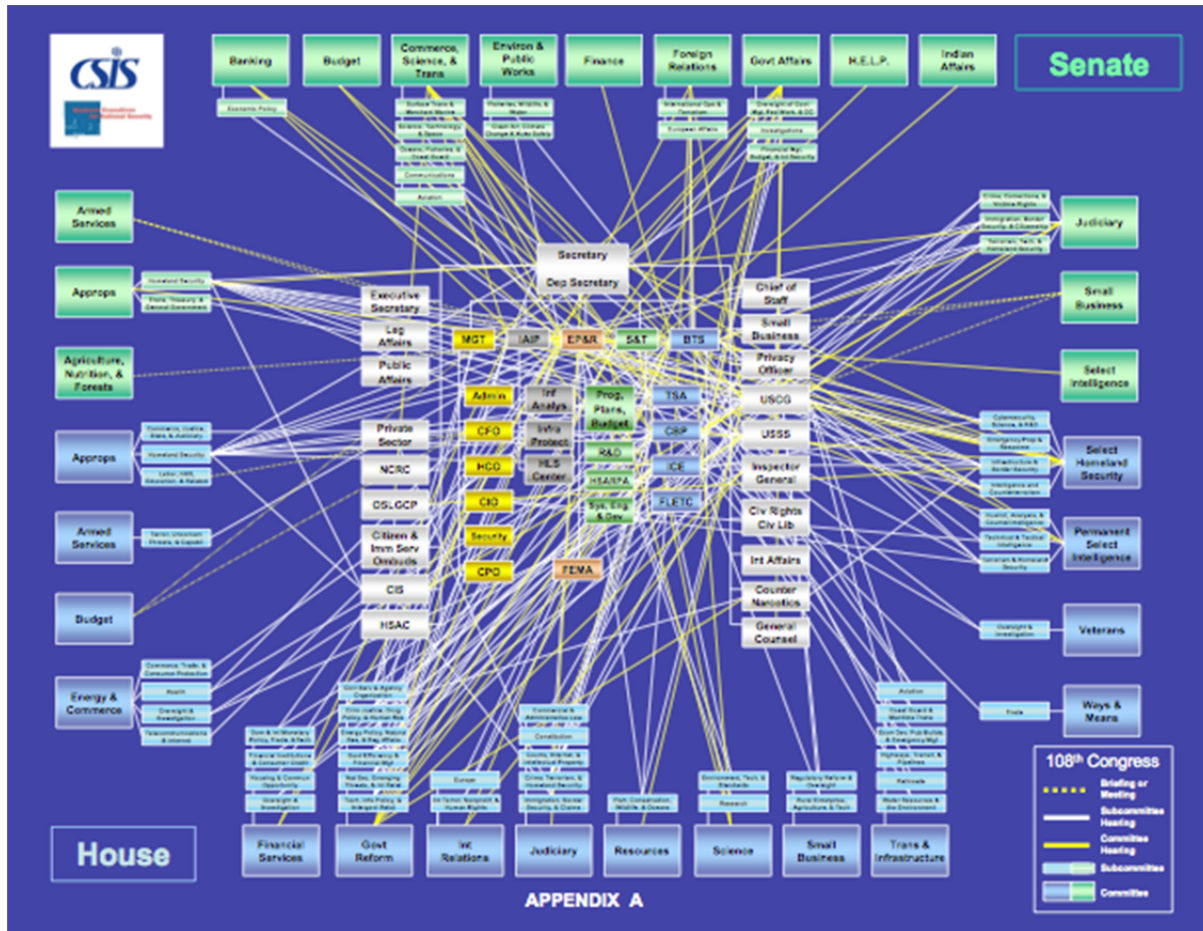


Figure 4. CSIS/BENS “spider web” chart¹⁶²

¹⁶² CSIS/BENS, *Untangling the Web*, Appendix A.

In recent years, the DHS Office of Legislative Affairs has produced some charts that start to show the magnitude of congressional interactions, such as the one in Figure 5.

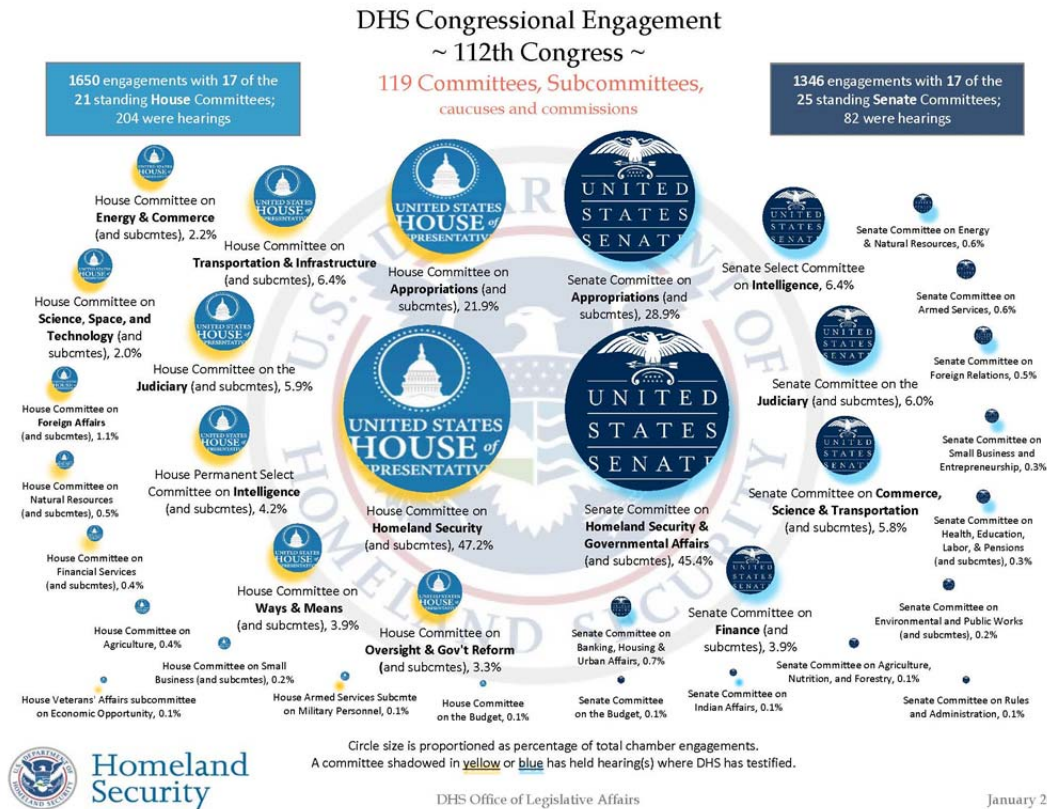


Figure 5. DHS congressional engagement 112th Congress¹⁶³

The most accurate visualization would be a hybrid of the CSIS/BENS method that maps the connections between committees and components, and also captures magnitude based on the number of committee interactions. This research used tools from the field of social network analysis that are designed to analyze interactions and attributes of the

¹⁶³ Office of Legislative Affairs, "DHS Congressional Engagement, 112th Congress," published in Task Force, *Streamlining and Consolidating Congressional Oversight*.

actors. Ucinet¹⁶⁴ and Net Draw¹⁶⁵ are software applications that are capable of ingesting large amounts of data and applying complex measures of centrality and other analytical measures to networks. In most studies, the more complete the network data the better the results will be.

This research analyzed non-hearing congressional data, mostly comprised of briefings between DHS officials and committee staff. In addition to being a larger sample, using briefing data may be a better measure of oversight. In 2010, DHS officials testified 191 times (138 hearings, some with multiple DHS witnesses).¹⁶⁶ While hearings are an important tool in oversight (they are certainly the most visible), they do not necessarily constitute the main avenue of oversight. Furthermore, it could be argued they do not produce the most effective oversight, as they largely consist of prepared statements, overly political sentiments from members of Congress, and overly cautious answers from agency witnesses. Congressional briefings are the day-to-day work of oversight that inform Congress of agency operations and inform agencies of the views of Congress.

Routine briefings are largely what define the “police patrol” method of oversight. In 2010, DHS participated in over 2,000 briefings.¹⁶⁷ Hearings are a big logistical challenge both for the committees and the agency witnesses. As such, committees have a limited number of hearings per year, but they have a lot more flexibility for staff briefings. For example, the House Committee on Homeland Security held 43 hearings in 2010 (32 with DHS witnesses) but DHS officials met with CHS staff 611 times in 2010.¹⁶⁸ Those numbers are roughly proportional in the total number of hearings and briefings (23

¹⁶⁴ Stephen P. Borgatti, Martin G. Everett, and Jeffrey C. Freeman, *Ucinet for Windows: Software for Social Network Analysis* (Harvard, MA: Analytic Technologies, 2002).

¹⁶⁵ Stephen P. Borgatti, *Net Draw Software for Network Visualization* (Lexington, KY: Analytic Technologies, 2002).

¹⁶⁶ Office of Legislative Affairs, U.S. Department of Homeland Security, “Hearing and Briefing Metrics 111th Congress 2nd Session” (unpublished document, Office of Legislative Affairs, U.S. Department of Homeland Security, 2010).

¹⁶⁷ *Ibid.*

¹⁶⁸ There are 611 entries in the briefing matrix created during this research, some of these will be duplicated records. For example, a Meeting with the House Committee on Homeland Security attended by CBP, ICE, and the Privacy Office would be counted three times in order to capture the tie between each of the DHS components and CHS. U.S. House Committee on Homeland Security Democrats, “Hearings and Markups,” 2010, <http://chsdemocrats.house.gov/Hearings/index.asp>.

percent of the all hearings, and 27 percent of all briefings), but the sheer number of interactions likely has an important impact on DHS. There are also important outliers to consider. The House Committee on Transportation and Infrastructure held 8.7 percent of the hearings in 2010 but only 41 or 1.8 percent of the briefings total.¹⁶⁹ Conversely, the Senate Appropriations Committee held two hearings in 2010 or 1.4 percent of the total, but accounted for 15.6 percent of the briefings.¹⁷⁰ The larger sample size of briefings may make up for any of the shortcomings of stripping the data from its context that is necessary when analyzing bulk data using the agency interaction method of measuring oversight.

For this research, those approximately 2,000 briefings were turned into a matrix or relational table that shows how many briefings each DHS component or office participated in with each committee.¹⁷¹ The sociogram that is derived from that table in Figure 6 shows the network of agency interactions where each DHS component or office (red circles) and each committee (blue squares) is a node in the network and the links between them represent a connection based on each being involved in a non-hearing engagement(s) with the other. Net Draw pulls data entered into Ucinet and plots the information in a network based on several measures of centrality.¹⁷² The nodes shown closest to the center are generally the most central to the network based both upon the number of total meetings and the number of nodes they have interactions with.

¹⁶⁹ Office of Legislative Affairs, “Hearing and Briefing Metrics 111th Congress.”

¹⁷⁰ Ibid.

¹⁷¹ The full relational table is available in Appendix C.

¹⁷² Net Draw and UCInet use several measures of centrality: closeness, harmonic closeness, betweenness, eigenvector, 2-local eigenvector, and degree.

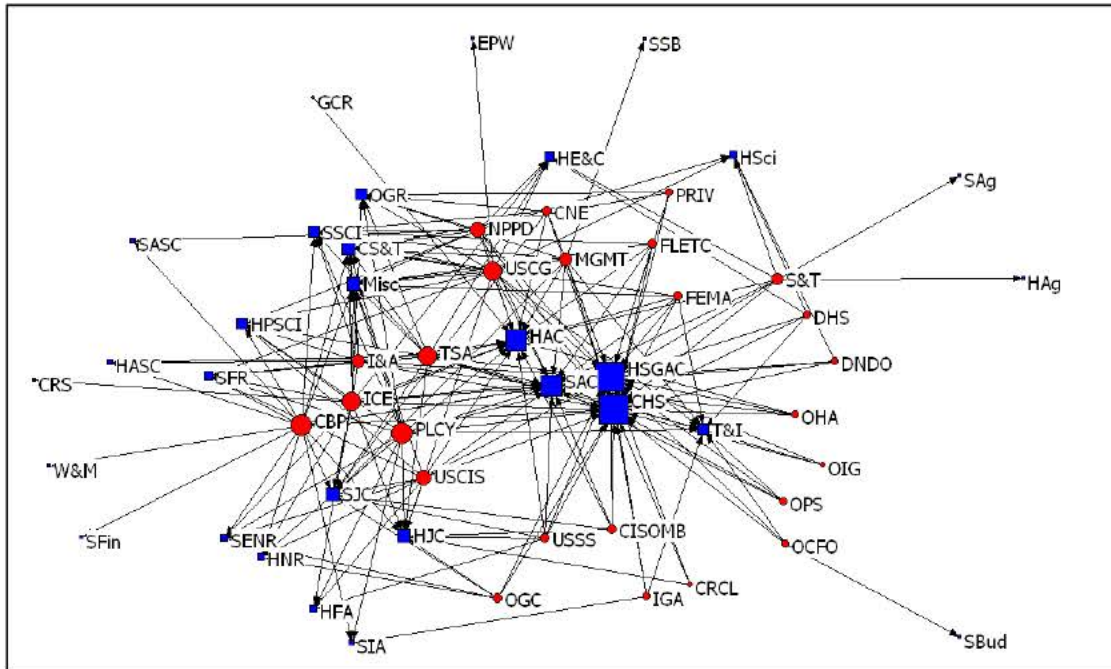


Figure 6. DHS 2010 relational briefing data displayed by Net Draw

At first glance, the map of committee interactions with DHS components in Figure 6 appears as complicated as the visualizations from previous research. Looking closer, one can see that some nodes are significantly larger than others (they are based on the number of interactions) and that some committees are on the far outskirts of the map. Furthermore, the software tools allow for a significant amount of additional manipulation. Since none of the committees are directly tied to each other, removing the DHS elements from the sociogram (though not the calculations) also removes all the ties. The result in Figure 7 provides an interesting clustering. Since the distance from the center is related to the centrality of the committees, drawing concentric rings reveals a tiered oversight regime. The resulting visualization shows the four homeland security committees as the most central to the network; the only close challenger for centrality is the House Committee on Transportation and Infrastructure.

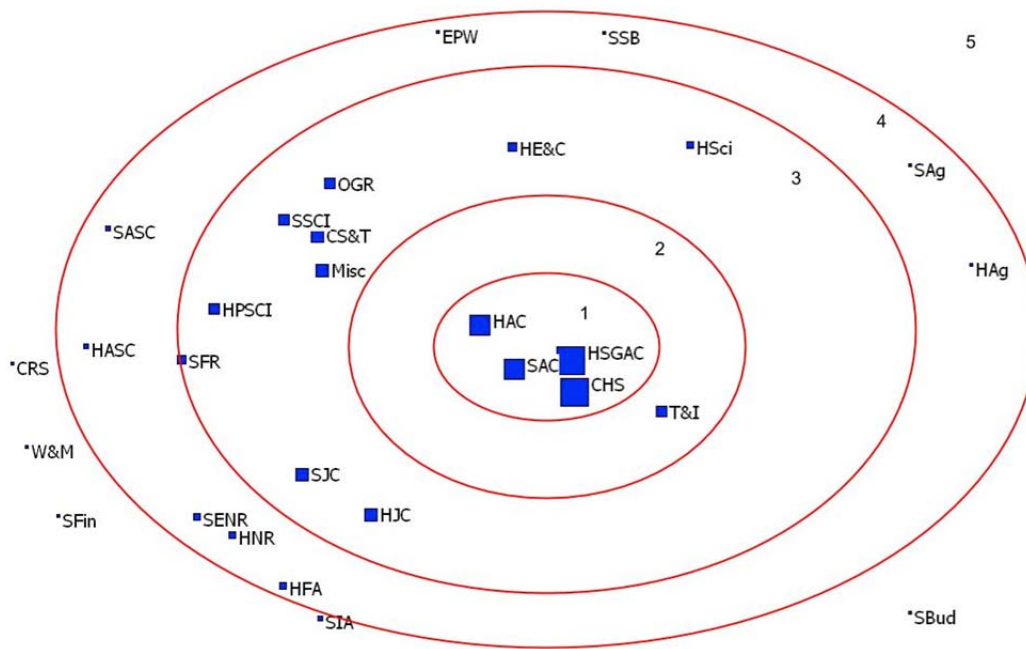


Figure 7. DHS briefing data, with notional tiers of jurisdiction

In Figure 7, tier 1 might be considered to have complete oversight into every aspect of DHS operations. The further out the committee is in the tiers, the less comprehensive their oversight of DHS, despite their explicit jurisdiction in the rules. This provides a much different view than the other charts that have been produced by others. Those charts see oversight jurisdiction as a binary function, either the committee or subcommittee has oversight of DHS or it does not. This chart makes it clear that the homeland security committees are more central and important than the others when looking at the department overall.

Because it is clear from the congressional record that whole elements of DHS were purposefully denied from the jurisdiction of the homeland security authorizing committees, it may be useful to look at segments of DHS individually to get a better sense of how those portions of DHS look. Isolating different elements of DHS shows that the homeland security committees have more or less clear jurisdiction despite the role of certain committees in certain segments of the DHS mission space. For the major components of DHS that deal with immigration and border security, a slightly different picture emerges in Figure 8.

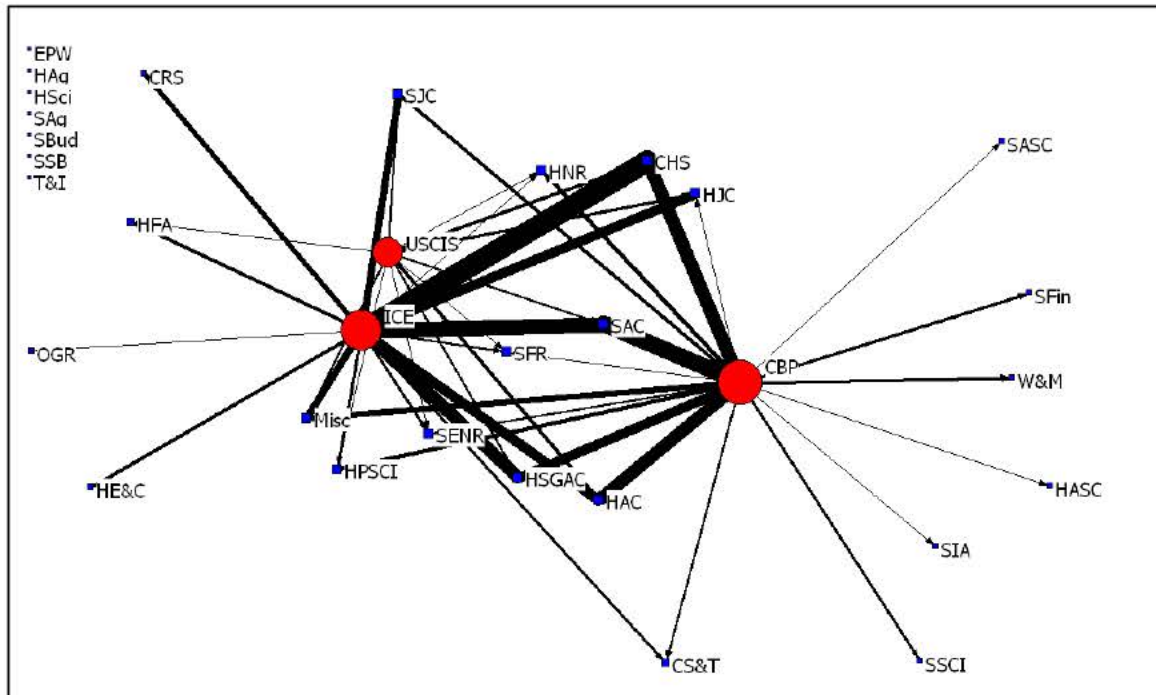


Figure 8. Oversight of immigration and border security

In Figure 8, centrality is less important than in Figure 7 (although the four homeland committees are still central) as a committee with briefings from all three DHS components would be considered very central. Instead, the strength of the ties will be more useful for analysis. The thickness of the lines in Figure 8 is directly related to the number of interactions each node shared with nodes linked to it. The four homeland committees still loom largest. House and Senate Judiciary Committees also have strong ties, as is expected given their jurisdiction over immigration. Senate Finance, the committee that conducts the confirmation process for the U.S. Customs and Border Protection (CBP) commissioner, and the House Ways and Means Committee also have ties to CBP, but they are not particularly strong compared to the homeland security committees.

One of the concerns of the 9/11 Commission was that when it came to homeland security, DHS leaders would not know from where to take their direction. It is absolutely possible to make that case when the homeland security committees are removed from the mix. In Figure 9, without the ties to the homeland security committees, the immigration

and border security elements of DHS would be guided only by weak, relatively equivalent committees, but this is not the case in the original image with all committees visible.

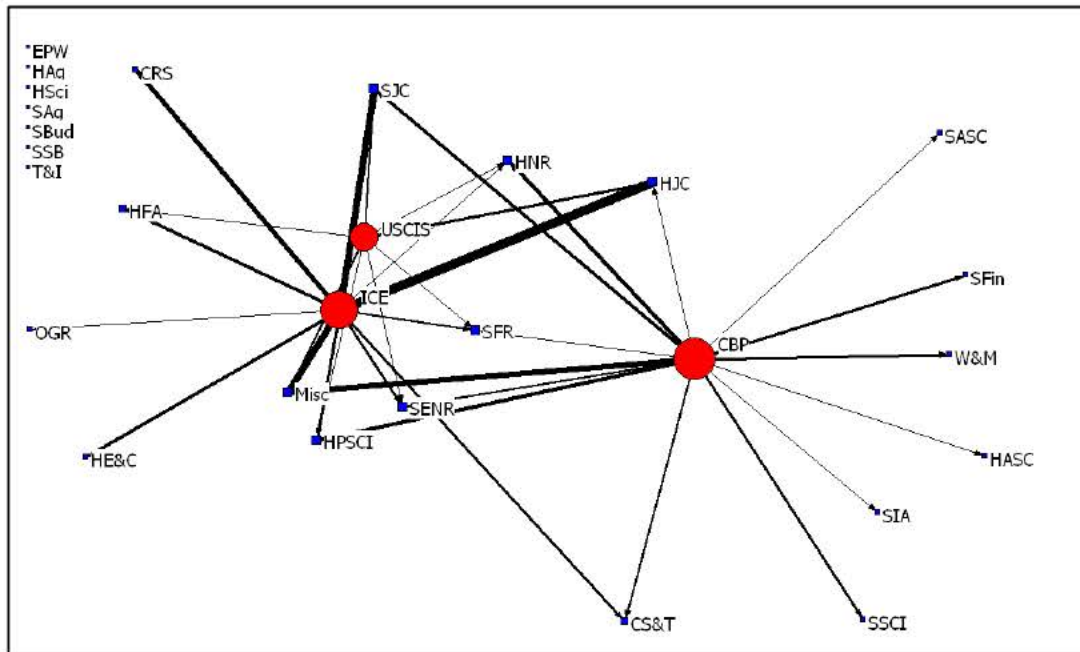


Figure 9. Oversight of immigration and border security without homeland security committees

This finding regarding direction from the homeland security committees is fairly similar on the side of homeland security that relates to intelligence, preparedness, emergency management, and response. Using the same 2010 briefing data, Figure 10 provides a potentially very confusing picture without the homeland security committees, but when the homeland security committees are added back in, it provides the potential for much clearer policy direction (Figure 11).

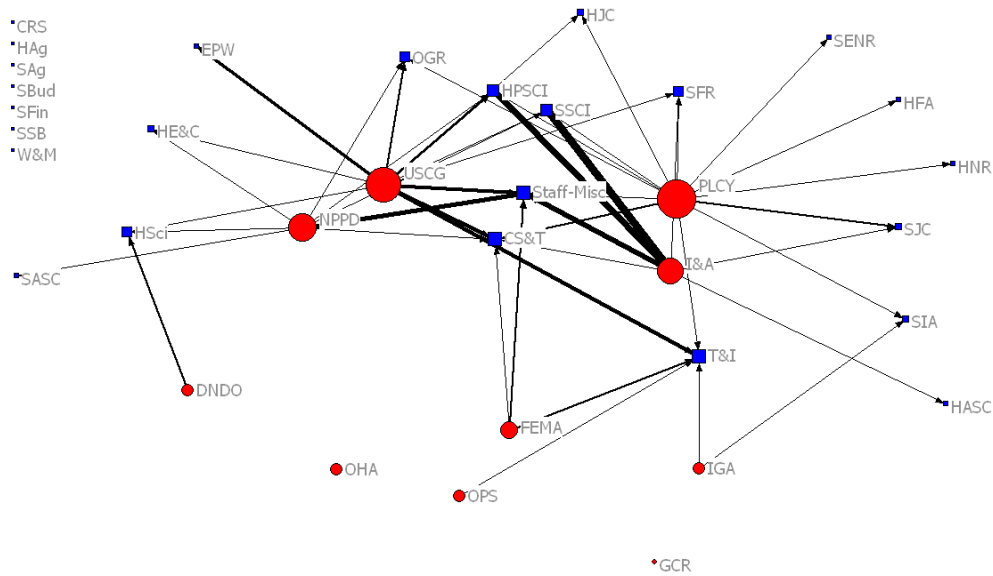


Figure 10. Preparedness and response without the homeland security committees

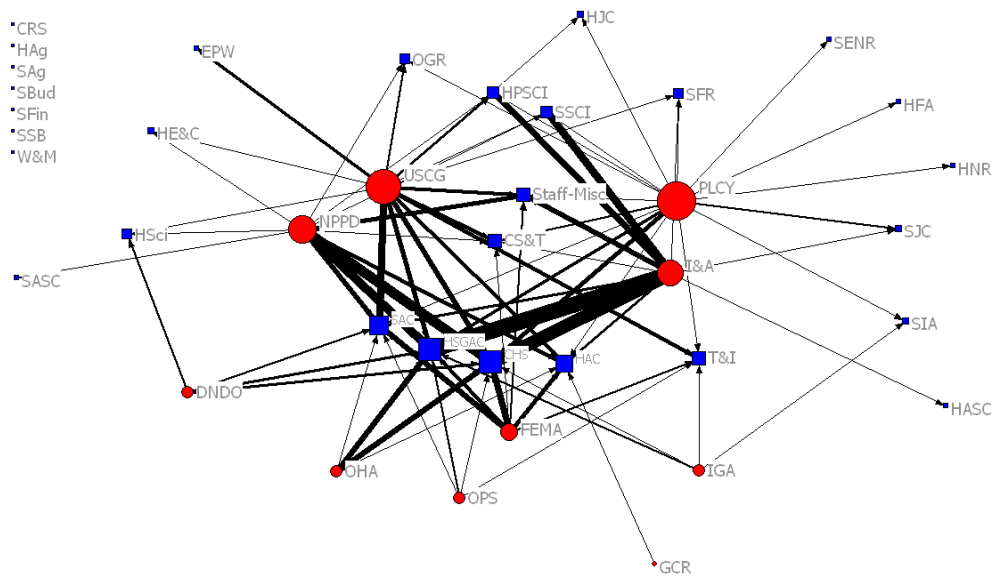


Figure 11. Preparedness and response with guidance from the homeland security committees

In Figures 10 and 11, the intelligence committees are somewhat prominent with strong ties to the U.S. Coast Guard (USCG) and the Office of Intelligence and Analysis (I&A). This makes sense given that the Under Secretary for Intelligence and Analysis is the DHS Chief Intelligence Officer and represents the Department in the Intelligence

Community and that the USCG is also a member of the Intelligence Community. Commerce Science and Transportation (CS&T), and Transportation and Infrastructure (T&I) have the next strongest ties outside of the homeland security committees; however, USCG and FEMA have just as strong, if not stronger, ties to the homeland security committees than they do to CS&T or T&I.

Visual representations of jurisdiction have been a powerful tool in the discussion of oversight of DHS. If the charts developed by this research replace those that have come before, then there will be a much better understanding of how DHS is overseen by Congress. The goal should never be to remove all but the homeland security committees from the map because those committees have responsibility for government wide issues that are a part of DHS and their members and staff often bring important expertise. It could become a goal to move most committees to the outer tiers.

There are only a handful of relevant decision makers when it comes to congressional jurisdiction, and so far they have been reluctant to act. In any case, even if the staunchest advocates for reform were to become part of the House and Senate leadership, it would never be possible to remove all of these committees from the map. With the exception of legislation, those decision makers likely know that things are not as dire as the 9/11 commissioners continue to claim. However, with a more nuanced view of homeland security and congressional oversight, minor reform may become possible.

Previous efforts to show oversight of homeland security visually have been disingenuous, or based on limited data. In the 112th Congress, the number of committees, subcommittees, caucuses, and other groups that DHS had interactions with was reported to be 119.¹⁷³ Of those, only 92 were committees or subcommittees, and of those, 27 did not hold a hearing in the 112th Congress. An additional 23 only held one hearing and five or fewer briefings.¹⁷⁴ As has been shown throughout this thesis, it is possible to have an

¹⁷³ Office of Legislative Affairs, U.S. Department of Homeland Security, “List of 112th Congressional Committees / Groups with whom the Department of Homeland Security Has Had Interaction” (unpublished document, Office of Legislative Affairs). Document available from the author upon request.

¹⁷⁴ Ibid.

interaction with DHS officials over non-homeland security topics and without duplicating efforts of other committees or providing conflicting policy direction. It would be difficult to argue that one hearing or a handful of briefings adds to the burden of oversight tremendously. In addition, 42 committees and subcommittees is much closer to the 36 committees and subcommittees that the Department of Defense reportedly answered to back in 2004.¹⁷⁵ Homeland security is a large, complex field, and DHS is a large agency with many disparate missions; it is not necessary to ignore the committees with limited interactions, as long as they are put in the proper context (i.e., tiers 2–5 of the homeland security oversight map, shown in Figure 7).

¹⁷⁵ CSIS/BENS, *Untangling the Web*.

VI. RECOMMENDATIONS AND IMPLEMENTATION

This research shows that there are fundamental aspects of homeland security and congressional organization that would make completely consolidating oversight ineffective or inefficient. Nevertheless, the research also shows that there are clear places where the homeland security committees need more authority. This chapter will present recommendations that are based on this research to create the optimal oversight of homeland security. This research is occasionally at odds with the majority of research and opinions on this issue, and at other times agrees with or presents new ideas. Some of the recommendations will advocate rule changes similar to what has been advocated previously, while recognizing that it has been ten years since Congress last made significant changes to its rules for the benefit of homeland security despite powerful figures and groups in homeland security advocating for the Congress to continue consolidation since then. While rule changes will do the most good for homeland security, there are ways to improve homeland security oversight without reforming the rules, and this chapter will pragmatically provide both types of recommendations.

A. RECOMMENDATIONS TO CHANGE CONGRESSIONAL RULES

Changing the rules of the House and Senate will have the most impact on creating an optimal oversight structure for homeland security. This research identifies five issues and associated recommendations to change the congressional rules.

1. Issue 1

While the 9/11 Commission popularized the idea of consolidated oversight of homeland security, the Bremmer, Hart-Rudman, and Gilmore commissions all recommended some consolidation; however, these recommendations were made before the Department of Homeland Security was even an idea. As such, they were likely concerned that an issue crossing departments and committees of Congress might not be dealt with adequately or would fall through the cracks. They likely envisioned a system similar to the intelligence committees, which have oversight of all Intelligence

Community members scattered across seven departments and independent agencies. In that model, a homeland security committee would have oversight over all aspects of homeland security regardless in which agency they fall.

Even when the 9/11 Commission issued its final report, there was some concern that the homeland security committees were going to end up being dissolved and oversight divided between the remaining standing committees. The findings presented in Chapter V showed that there would be a noticeable problem with policy direction from oversight were that to have happened, and perhaps no committee would be thinking strategically about homeland security given their hefty responsibilities overseeing other aspects of the government. Yet with the current committee structure, the findings in Chapter V show that there is clear guidance from the homeland security committees, and the case studies show that other oversight is generally not over homeland security issues with a few notable exceptions. The House Committee on Homeland Security already has jurisdiction of “overall homeland security policy,” and while the senate Homeland Security and Governmental Affairs Committee is lacking such clear language, it has been exercising such oversight.

a. Recommendation 1

The Senate Homeland Security and Governmental Affairs Committee should be given clear overarching jurisdiction over homeland security policy in the rules of the Senate to match the oversight jurisdiction of the House Committee on Homeland Security.

2. Issue 2

This thesis argues that the current thinking on oversight of homeland security does not mirror the multidisciplinary nature of homeland security. The Department of Homeland Security will never be able to neatly fit within the jurisdiction of one committee of each house of Congress. The thinking that it could flies in the face of the congressional committee system, in which many committees have jurisdiction over broad issues in addition to jurisdiction over particular agencies or parts thereof. In fact,

consolidating jurisdiction further than has already been done could harm homeland security in certain circumstances. Committees build up expertise in their members and their staffs over decades and each committee only has a certain capacity for expertise because of their limited budgets. However, there are some core homeland security functions that are currently outside the jurisdiction of both homeland security committees. Prime examples of this include oversight of and emergency management of natural disasters in the House and transportation security in the Senate. CHS and HSGAC end up conducting oversight of TSA and FEMA as they consider overall homeland security policy and allowing other committees to have explicit jurisdiction over them does create duplication. TSA can continue to respond to the House Transportation and Infrastructure Committee and the Senate Commerce, Science and Transportation on activities that impact transportation itself and not just transportation security, just as CBP answers to Senate Finance and House Ways and Means on revenue issues. In the case of Senate Commerce, this will be significantly less oversight than currently constructed.

a. Recommendation 2

Oversight of core homeland security functions should be transferred from outside committees to the homeland security committees. Emergency management and transportation security are key examples where either the House or Senate has provided oversight to the homeland security committee but the other has not.

3. Issue 3

Homeland security consists of various preparedness, security, response, and resiliency functions across sectors. For example, homeland security includes maritime security (coastal and ports); the major element of DHS that conducts maritime security, the U.S. Coast Guard, is also responsible for maritime safety and lifesaving services. This does not mean that maritime safety is an element of homeland security. As such, it does not make sense necessarily to provide jurisdiction of the U.S. Coast Guard, in whole, to the Committee on Homeland Security in the House or the Homeland Security and Government Affairs Committee in the Senate. In order to provide proper oversight of the

Coast Guard, each committee would need significantly more expertise in non-maritime security issues regarding the Coast Guard than it has now, which would likely mean less oversight of other issues. However, the homeland security committees should be conducting oversight into the homeland security aspects of Coast Guards operations in order to ensure that it is coordinated with overall homeland security policy.

a. Recommendation 3

Major functions of DHS currently outside of the homeland security committees' jurisdiction, which stand apart from other issues such as non-security related immigration issues (e.g., country quotas) and Coast Guard functions (e.g., aids to navigation) that were transferred to DHS, should be transferred to the homeland security committees but only if associated staff and budgets are also transferred.

4. Issue 4

The case studies in Chapter IV demonstrated that simply because functions are co-located within a department or agency for efficiency does not mean that the most effective way for Congress to oversee the government is perfect alignment of committees and departments. There is not a Department of Insurance that manages all federal government insurance programs, but there is a Subcommittee on Securities, Insurance, and Investments that oversees all government insurance programs wherever they are best aligned in the executive branch. Having HSGAC hire insurance expertise just to oversee the flood insurance program is not efficient, and it would not necessarily increase homeland security.

a. Recommendation 4

Functions of DHS that are not core homeland security functions and are closely associated with core oversight responsibilities of non-homeland security committees, such as flood insurance, housing, and revenue collection, should remain under the jurisdiction of committees with expertise to properly oversee those functions.

5. Issue 5

The research in Chapter V shows a very serious problem for homeland security oversight: homeland security legislation faces a higher barrier to passage than average legislation. This research identified that *emergency management* legislation and bills related to the Department of Homeland Security have a greater barrier to passage due to being referred to multiple committees. While topical oversight of DHS by multiple committees may result in minor duplication, even after the previous recommendations, legislative jurisdiction will still mean that bills relating to homeland security (and certainly bills that relate to the entire DHS) will continue to be referred to multiple committees more often than not (it is unclear if the added barrier to passage will remain). But without these reforms, the dire situation for homeland security legislation remains unchanged. The House and Senate may benefit in general from reforming their rules relating to multiple referrals, but if it becomes more regimented, homeland security oversight will benefit. Congress is already passing a record low number of laws and could in general stand to have rules that reduce procedural hurdles.¹⁷⁶ To solve the problem of committees sitting on legislation they do not like, but do not intend to perfect through amendment, there could be a rule in the House and Senate that if a bill is referred (non-sequentially) to multiple committees that each committee has a set number of calendar or session days to report out the bill or it will automatically be discharged from the committee. This is not entirely without precedent; the speaker has set rules governing time limits on sequential referrals previously.¹⁷⁷ Mark and Walter Oleszek pictured an environment of “creative redundancy”¹⁷⁸ and former House Rules Committee Chairman envisioned “purposeful redundancy”¹⁷⁹ in Congress’s oversight of DHS. However, redundancy relies on the concept that when one system fails, the redundant one backs it up, not where the redundant system causes the main system to fail.

¹⁷⁶ DeSilver, “In Late Spurt of Activity.”

¹⁷⁷ Davidson, “One Bill,” 6.

¹⁷⁸ Oleszek, and Oleszek, “Institutional Challenges Confronting Congress after 9/11,” 57.

¹⁷⁹ 1 Cong. Rec. H14 (daily ed., Jan. 4, 2005) (remarks of David Drier), quoted in Koempel, *Homeland Security*.

There is surely a reasonable time, whether 30, 60, or 90 days that is enough time for a committee intending to take action on a bill to have an opportunity to do so. As Chapter V discussed, if committees do not take action on multiply-referred bills, the legislation stalls. In the House, bills are often referred “for a period to be subsequently determined by the Speaker.”¹⁸⁰ Unfortunately, time limits are rarely placed on the committees. It is possible that the speaker rarely subsequently assigns a deadline because doing so would seem punitive or overly favoring one committee over another, and setting a timeline would be a negative action, rather than a neutral one. If the rules set the deadlines automatically, this would remove one of the barriers. The deadlines could always be extended in extenuating circumstances, or if it relates to major or complex legislation, but extending would be a positive act except at the end of a Congress when asking for extension could be a delaying measure to ensure the bill does not move forward when there is otherwise consensus to do so.

a. Recommendation 5

Congress should adopt rules that, by default, limit the amount of time committees have to act on legislation referred to multiple committees before it is automatically reported out of committee.

B. RECOMMENDATIONS WITHOUT RULE CHANGES

These first five recommendations are significantly different from those being advocated by the 9/11 commissioners and their supporters at DHS, on the homeland security committees, by the media, and in think tanks. They could be seen as a compromise between the status quo and what reformers have sought, and they take into account the reasons that non-homeland security committee chairs have had in resisting reform without assuming they are selfish or uninterested in protecting the country. The above recommendations would improve homeland security policy without detracting from other missions of the government. Despite the fact that this research, using a more

¹⁸⁰ Library of Congress, “Bill Summary and Status: H.R. 3116, 112th Cong.,” accessed February 20, 2015, <https://www.congress.gov/bill/114th-congress/house-bill/399/all-actions>.

or less complete view of oversight jurisdiction and homeland security, shows the need for these reforms, the history of this problem means that there will likely be no change to the House or Senate rules. The window for change is small (just at the beginning of every Congress) and there is continued interest by the non-homeland security committees in maintaining their traditional jurisdictions. CHS Chairman McCaul submitted a statement to the House Rules Committee prior to the start of the 114th Congress, making the case that has been made for nearly 10 years.¹⁸¹ However, no changes were made despite this request and a bevy of activity in 2014 for the 10-year anniversary of the 9/11 Commission's final report. There are, however, changes that could be made that do not require changes to the House and Senate rules.

1. Issue 6

Despite incomplete measurements—which lead them to slightly different conclusions—the 9/11 commissioners and those that follow their school of thought are right to be concerned that homeland security policy can easily become disjointed if there is not a committee in each house focused on it. There has been turnover in the leadership of the Senate Homeland Security and Governmental Affairs Committee, and it has a significant workload in its oversight of government management. However, from their press releases and public statements Chairman Johnson and Ranking Member Carper seem to understand the importance of continuing oversight of homeland security across the government. Both HSGAC and CHS have had hearings recently with officials from the FBI, the National Counter Terrorism Center, state and local governments, the private sector, and others who are part of the homeland security enterprise but not DHS. This should continue so that one committee in each house is closely following homeland security policy.

a. Recommendation 6

¹⁸¹ *Members' Day Hearing: Before the House Committee on Rules Subcommittee on Rules and Organization of the House, Statement from Congressman Michael T. McCaul, Chairman of the U.S. House Committee on Homeland Security, 113th Cong. (2014),* <https://rules.house.gov/sites/republicans/rules.house.gov/files/113-2/PDF/HHRG-113-RU04-MState-M001157-20140917.pdf>.

The homeland security committees should continue to provide broad oversight and policy direction to all homeland security functions in the federal government as well as in state, local, tribal, and territorial governments and the private sector where practicable.

2. Issue 7

As the agency chiefly concerned with improving overall homeland security, DHS should facilitate the homeland security committees in conducting oversight. While TSA and the Coast Guard do not technically need to report to HSGAC on homeland security matters, they ensure, and should continue to ensure, the Senate has a body that institutionally can consider all matters relating to homeland security. While this may create some duplication or overlap, it is in DHS's best interest to have an ally in Congress that spends as much time driving a balance between commerce, transportation, and security as DHS, the Coast Guard, and TSA do. It is possible to see how this could be important if the Senate Commerce, Science and Transportation Committee ever began to push for changes at TSA and Coast Guard that would be inadvertently detrimental to security because it was overemphasizing benefits to commerce or transportation.

a. Recommendation 7

DHS should continue to facilitate oversight by the homeland security committees by having all components actively engage with them regardless of whether they have jurisdiction in the rules of the House and Senate.

C. RECOMMENDATIONS TO REDUCE DUPLICATION

Recommendations 1–7 will undoubtedly lead to some duplication, although briefing the same topic to different committees should not always be considered duplication. After all, advocates for consolidation will admit that briefing a topic (e.g., a cybersecurity initiative) to appropriators and authorizers is not duplicative, as one is looking at issues relating to current or future funding and the other is looking at whether there are appropriate authorities and how the activity fits into overall homeland security policy. Briefing the same topic to the commerce committees is likewise not duplicative

because they are considering how it fits into the overall communications and commerce policy. Likewise, the Department of Transportation (DOT) should occasionally brief the homeland security committees so they can understand how activities under DOT's purview could impact homeland security policy. For example, there has been a recent spate of train derailments and explosions due to single trains transporting hundreds of tanker cars of crude oil.¹⁸² The Department of Transportation has authority over rail transportation of hazardous materials and has recently considered changing regulations to improve safety.¹⁸³ The homeland security committees may want to ensure that security is taken into account given the explosive potential of these trains. There may be some instances where these recommendations will create actual duplication; this is unfortunate, and only changes in the House and Senate rules can alleviate that. However, there are some additional strategies that could alleviate the burden duplicate oversight poses to DHS.

The 9/11 Commission was concerned about the burden of oversight on senior leaders, and all four secretaries of DHS have echoed the concerns. However, one report estimated the cost of oversight at \$10 million per year.¹⁸⁴ DHS has a roughly \$60 billion budget, and considering that the DHS Office of the Inspector General's budget alone is about \$141 million, an additional \$10 million in congressional oversight costs does not seem overly high on its face.¹⁸⁵ Nevertheless, congressional oversight plays an undue role in the minds of senior leaders.

1. Issue 8

Critics of the current oversight structure argue that it is overly burdensome while at the same time recognizing that strong oversight is beneficial to policy. As such, the

¹⁸² Associated Press, "West Virginia Train Derails, Sending Oil Tanker into River," *The New York Times*, February 17, 2015, <http://www.nytimes.com/aponline/2015/02/16/us/ap-us-train-derailment.html>.

¹⁸³ Timothy Cama, "Oil Train Derails, Explodes in West Virginia," *The Hill*, February 17, 2015, <http://thehill.com/policy/energy-environment/232922-oil-train-derails-explodes-in-west-virginia>.

¹⁸⁴ Task Force, *Streamlining and Consolidating Congressional Oversight*, 12.

¹⁸⁵ U.S. Department of Homeland Security, "FY2016 Budget in Brief," U.S. Department of Homeland Security, 2015, http://www.dhs.gov/sites/default/files/publications/FY_2016_DHS_Budget_in_Brief.pdf.

only oversight that should be considered burdensome is that which is duplicative and has no added value. The case studies showed that there was at least some added value in several instances when non-homeland security committees participated in oversight. The argument against duplication runs up against the design of Congress as an oversight mechanism. Bicameral, bipartisan, and splitting authorization and appropriations, there is a certain amount of duplication built into congressional oversight. It was designed to be a fully deliberative process that also protects the rights of each house of Congress and provides certain rights to minority members. The necessity of seeking consensus on an issue in a bicameral and bipartisan way has led to the development of the term, “four corners” to describe the top Democrat and top Republican in the House and Senate Appropriations Committees.¹⁸⁶ When considering the split of authorization and appropriations, one could say it goes from the four corners of a square to the eight corners of a cube. This is real duplication over the entirety of homeland security. Chapter V showed that the four homeland security committees are most central and dominate interactions with DHS and the other committees, and yet an outsized amount of attention has been given to the overlap in jurisdiction of other committees.¹⁸⁷ The Gilmore Commission flirted with the idea of a Joint House and Senate Homeland Security committee, but ultimately it recommended the bicameral and split appropriations/authorizations structure.

The 9/11 Commission suggested that the authorizing homeland security committees should have non-partisan staffs. This part of the recommendation is probably the most overlooked by critics of the oversight structure, perhaps because it has been

¹⁸⁶ Zach Carter, “Elizabeth Warren Joins Revolt against Wall Street Deal in Government Shutdown Talks,” *Huffington Post*, December 9, 2014, http://www.huffingtonpost.com/2014/12/09/wall-street-subsidy-shutdown_n_6292950.html.

¹⁸⁷ There will be some overlap and duplication beyond the eight corners, but this can be moderated without stripping jurisdiction. For instance, the House Committee on Homeland Security, in exercising its oversight of the implementation of overall homeland security policy of the U.S. Coast Guard, should not hold hearings on specific non-security related topics, such as aids to navigation or boating safety. Instead, CHS could hold hearings specific to port and maritime security or hold a general security oversight hearing that looked at a number of topics, including security vulnerabilities to aids to navigation and how boating safety classes for members of the public could be used to foster greater security awareness and reporting. Likewise, the Transportation and Infrastructure Committee should not hold a hearing focusing solely on Coast Guard’s port security mission.

within the authority of the homeland security committees to implement, but they have not done so. It should be noted that the Homeland Security and Governmental Affairs Committee has been particularly bi-partisan. In 2007, then Chairman Joseph Lieberman (a long time Democrat who had recently re-elected as an Independent and was caucusing with the Democrats) changed the seating arrangement to alternate Democrats and Republicans around the dais by seniority, rather than sitting on opposite sides.¹⁸⁸ On the opposite side of the spectrum, the Senate Judiciary Committee maintains separate staff email naming conventions for Democrats and Republicans (i.e., @judiciary-dem.senate.gov and @judiciary-rep.senate.gov). Both of these examples may be only symbolic in nature, but they show there are varying degrees of partisanship in committee staffs.

Instead of ditching political staff altogether, one option could be for each committee to maintain a relatively large cadre of non-partisan policy experts shared between the majority and minority and maintain only a handful of majority and minority staff. Given the volatility of congressional staff employment, many experts are likely dissuaded from working for congressional committees, but the existence of non-partisan positions may encourage even more well-qualified professionals to seek employment with the homeland security committees.

a. Recommendation 8

The homeland security committees should examine their staffing structures and reconsider the potential benefits of non-partisan staff. Where possible, joint engagements between multiple committees, chambers, and parties will reduce the burden on DHS.

2. Issue 9

The department's most senior leaders should not testify in front of the non-homeland security committees as a matter of course, and when they do, there should be an understanding that the scope of the hearing is limited to the issues under that

¹⁸⁸ "Lieberman Panel Mixes Democrats and Republicans," *The Washington Post*, April 9, 2007, sec. Politics, <http://www.washingtonpost.com/wp-dyn/content/article/2007/04/08/AR2007040800784.html>.

committee's jurisdiction. It has become routine for the DHS secretary to testify annually (or more frequently) before the House and Senate Judiciary Committees ostensibly due to their wide jurisdiction over immigration matters and law enforcement. Ideally, if the judiciary committees maintain jurisdiction over immigration (and of course they would maintain jurisdiction over federal law enforcement), they should call the heads of the agencies under DHS with immigration and law enforcement responsibilities as witnesses instead of the DHS secretary. Practically speaking, this has been difficult for DHS to insist on because the current and previous administrations have sought comprehensive immigration reform legislation that needed to go through the judiciary committees, which has necessitated a cabinet level witness. It might be appropriate for a new secretary to testify before the judiciary committees in the first year of his or her tenure or to testify before other non-homeland security committees in the course of seeking specific major legislation or if a major issue arrive within the explicit jurisdiction of another committee.

a. Recommendation 9

The secretary of DHS should not testify before non-homeland security committees on a regular basis.

3. Issue 10

Where it is not possible or politically expedient to send an assistant secretary level witness, any hearings with the DHS secretary by non-homeland security committees should be scheduled in a more efficient manner. Cabinet officials prepare for days and even weeks in advance of hearings, often holding prep sessions with the heads of operational components and other senior policy experts and advisors in order to be able to competently answer questions about any part of their department.¹⁸⁹ Some may argue that well performing officials should be able to answer questions without this preparation. Anyone who has testified before even a friendly committee, will tell that a good memory and rapid recall will not provide one with the latest status of the major programs in a

¹⁸⁹ U.S. Department of Homeland Security, "Calendars of Secretary Napolitano," DHS FOIA Reading Room," accessed February 18, 2015, <http://www.dhs.gov/calendars-senior-officials>.

department with 230,000 employees and a \$60 billion budget. It may be that the incumbent secretary at any given time would prefer to have hearings spaced out evenly throughout the year, but a best practice that has developed at other agencies (and at times has been deployed at DHS) is to have hearings with different committees or chambers of Congress on consecutive days.¹⁹⁰ This minimizes the amount of preparation time, since one series of prep sessions, if the hearings are close enough together, can serve to prepare a secretary for all. This will free up time for the secretary and his or her senior leadership to focus on their principal missions, while facilitating multiple committees' need for oversight.

a. Recommendation 10

Hearings with the DHS secretary should be scheduled in a more efficient and accommodating manner.

4. Issue 11

The non-homeland security committees may need to adjust their understanding of their jurisdictions. Committees that maintain oversight over a particular issue should not conduct oversight over the entirety of DHS, a component, or office because they have oversight of a function carried out by that part of DHS. For example, the House Ways and Means Committee has jurisdiction over “Customs revenue, collection districts, and ports of entry and delivery.”¹⁹¹ However, it should not attempt to exercise jurisdiction over the entirety of Customs and Border Protection or even the entirety of the Office of Field Operations or Office of International Trade, which collect revenue and set trade policy respectively. DHS and the committee should come to an understanding of how liberally to interpret what constitutes an impact on trade or revenue, but it should only conduct oversight over matters pertaining to trade and revenue. DHS needs to tread a fine line in deciding what information to provide simply as a courtesy to these non-homeland security committees. Not providing enough information that committees may find

¹⁹⁰ Office of Legislative Affairs, U.S. Department of Justice, “Congressional Testimony,” accessed February 18, 2015, <http://www.justice.gov/ola/congressional-testimony>

¹⁹¹ U.S. House of Representatives, “Rules of the House,” House Rule X, Clause (t), §1.

relevant to their work will engender a bad relationship between those committees and DHS, making it harder for the two to do business together. While providing too much information outside the committee's jurisdiction may create an entitlement to similar information in the future. Furthermore, if there are issues of mutual interest that have a nexus to both security and non-security functions there should be an inclination toward joint briefings and joint hearings with the homeland security committees and other committees.¹⁹²

a. Recommendation 11

DHS should limit its interactions with non-homeland security committees to what they are given jurisdiction over in the House and Senate rules. Joint briefings between the homeland security committees and others could be useful in minimizing the time and resources of oversight of the same topic.

5. Issue 12

Given the success rate of sequential referrals, the homeland security committees may have more success at passing comprehensive reauthorizations bills if they sought to have those bills referred sequentially. Barring that, they could try to avoid multiple referrals. However, bills that deal with multiple elements of DHS will automatically be referred to more than one committee given the patchwork of jurisdiction. Recently, the three former secretaries of DHS sent a letter with recommendations on how to improve oversight of homeland security in the rules of the House. The letter listed transfers of oversight jurisdiction and indicated where the status quo should remain, and concluded with "All other current jurisdictions should end."¹⁹³ Even if the homeland security committees were given explicit jurisdiction over all elements of DHS (e.g., TSA, FEMA, Coast Guard, U.S. Secret Service (USSS), and the Federal Law Enforcement Training Center (FLETC)), the House and Senate rules would then need to be further changed to explicitly prohibit oversight of DHS from all other committees to avoid multiple

¹⁹² DHS records show a number of joint briefings between committees and chambers of Congress. This greatly reduces the amount of time and resources necessary to respond to oversight requests.

¹⁹³ *Members' Day Hearing*, 5.

referrals. As an extreme example, if a DHS authorization bill in the House set out to establish a goal for small business contracting above the government wide goal, the bill could conceivably be referred to the House Committee on Small Business unless the rules of the House relevant to the that committee were altered to provide jurisdiction only over, “Participation of small-business enterprises in Federal procurement and Government contracts, *except contracts issued by the Department of Homeland Security,*”

a. Recommendation 12

The homeland security committees should seek to have their bills referred sequentially rather than jointly.

6. Issue 13

The homeland security committees could also try to break their bills into titles that align with the current rules and negotiate with the parliamentarians and other committee chairs to have their bills split referred. The House Committee on Homeland Security tried this in the 112th Congress by introducing separate bills based on committee jurisdictional lines and then incorporating some of them into a larger bill. Table 8 shows these bills and the committees to which they were referred.

Table 8. Authorization bills referred to House Committee on Homeland Security and one other committee

Bill Number	Title	Second Committee
H.R. 2269	Fire Grants Reauthorization Act of 2011	Science, Space, and Technology
H.R. 2903	FEMA Reauthorization Act of 2012	Transportation and Infrastructure
H.R. 901	Chemical Facility Anti-Terrorism Security Authorization Act of 2011	Energy and Commerce
H.R. 3011	Transportation Security Administration Authorization Act of 2011	Judiciary

This strategy almost worked. However, other committees sought a sequential referral of the parent bill H.R. 3116 in the last months of the Congress, which likely would have killed the bill. The chair of the Committee on Homeland Security was able to negotiate sequential referrals with three committees but with a one-day time limit. This had the effect of allowing each committee to retain its record of bill referrals for the sake of precedent but to allow the bill to move forward without any further committee action that would delay or block passage. This occurred in the last week of the 112th Congress and the bill was placed on the calendar but never taken up on the floor, perhaps because passage in the Senate was not possible.¹⁹⁴ Sequential referral works best when there is some cooperation between committee chairs or when leadership is willing to step in and mediate. Instead of hoping to avoid sequential referral or negotiating after the fact, sequential referral, with the timeline and instructions that come with it, could be part of the initial strategy. This is easier said than done. The twenty-first century is both blessed and cursed by transparency and diversity of thought, which has made coming to consensus, compromise, and action more costly in politics. The constraints of sequential referral are successful because they force either consensus or conflict, which can then be addressed. In addition to sequential referral, joint referral could be improved if each committee, whether the primary committee or not, is given a very specific timeframe (perhaps granting extension for extraordinary measures). This either could be a concession that leadership gives to the homeland security committees (any bills that propose to amend the Homeland Security Act of 2002) or it could be a change that would help improve the efficiency of Congress writ large and bring the barrier of passage of multiple referrals back down to pre-twenty-first century levels. Nevertheless, homeland security would benefit.

a. Recommendation 13

The homeland security committee chairs should seek various creative avenues with the speaker of the House, presiding officer of the Senate, and other committee chairs

¹⁹⁴ The public record is not clear why. Library of Congress, “Bill Summary and Status: H.R. 3116, 112th Cong.,” accessed January 18, 2015, <https://www.congress.gov/bill/112th-congress/house-bill/3116/>.

to move bills more efficiently through his or her respective chamber, while recognizing that other committees have vested interests in legislation that impact DHS.

7. Issue 14

The rules could be amended to provide larger jurisdiction to the homeland security committees and take it away from other committees. This has been the goal of the 9/11 Commission and its allies for ten years and has not proven successful. There are alternatives to changing the written jurisdiction to expand oversight. David King argues that committees can become “policy entrepreneurs” and deliberately write bills and make agreements with other chairmen to get bills referred to their committees, in this way the system of precedent will let them creep into areas over which they do not have explicit jurisdiction.¹⁹⁵ The House Committee on Homeland Security seems to have begun to do this in the area of cybersecurity. In the 113th Congress, it had several pieces of cybersecurity legislation referred to the committee. Several of those bills became law, and CHS has established a solid bill referral precedent for cybersecurity legislation. At the very end of the Congress, a bill passed by the Senate to reform the Federal Information Security Management Act, which involved oversight and reporting of cybersecurity, privacy, and information technology (IT) management for the entire federal government and was associated with CHS by the library of Congress. It may help them carve out even more jurisdiction over cybersecurity in future years. It is important to keep in mind that the goal of these recommendations is not to make the easiest path to passing law while disregarding the expert opinions of staff and members of non-homeland security committees. Rather, the goal is to force action when there is disagreement, so that it can be addressed and improve bills.

a. Recommendation 14

The homeland security committees should take any parliamentary actions that will help them secure larger jurisdiction over homeland security topics.

¹⁹⁵ King, *Turf Wars*.

D. CONCLUSION

Ultimately, this research has shown that there are only four central homeland security committees, and they dominate the policy direction that DHS and the homeland security enterprise receives (see Figure 12). There are a few structural challenges that an agency as new and ubiquitous as DHS faces in Congress. The broad mission of DHS and the all-hazards concept of homeland security mean a presence in every major sector of American life. Because of this, many committees participate actively in oversight of DHS activities. There are some areas of duplication, which should be eliminated or minimized, but they are not as great as has previously been argued in other research and advocacy.

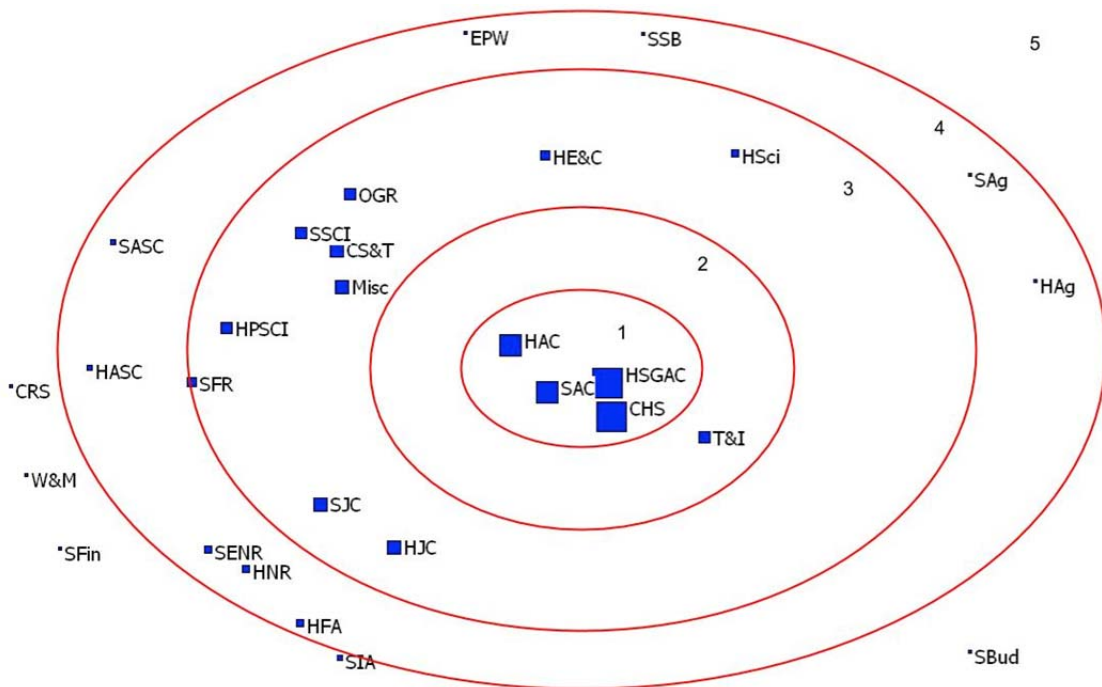


Figure 12. Tiers of oversight

Passing legislation is a significant structural challenge. This research identified that legislation referred to more than one committee disproportionately impacts homeland security. Given how interconnected homeland security is to the jurisdiction of other committees, it is not practical, nor is it politically feasible to strip legislative jurisdiction from other committees. Instead, Congress should focus on procedural changes that could

improve the legislative process in general and would improve the chances of passage of homeland security legislation.

Homeland security has a large role in Americans' lives. DHS is by far the federal department that Americans interact with the most. Its mission largely revolves around protecting human life, and it is an area that if abused could infringe on Americans' rights. As such, it relies on active engagement and oversight by Congress—whom the people elected—to ensure the efficient conduct of its mission and for the vital resources and authorities to accomplish that mission. While it is important for Congress to have a dedicated committee in each house focused on overall homeland security policy, it is just as important for homeland security to be considered in an integrated way with all other government policy and not in a vacuum.

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APPENDIX A. LIST OF RECOMMENDATIONS

Recommendations to change congressional rules:

1. The Senate Homeland Security and Governmental Affairs Committee should be given clear overarching jurisdiction over homeland security policy in the rules of the Senate to match the oversight jurisdiction of the House Committee on Homeland Security.
2. Oversight of core homeland security functions should be transferred from outside committees to the homeland security committees. Emergency management and transportation security are key examples where either the House or Senate has provided oversight to the homeland security committee but the other has not.
3. Major functions of DHS currently outside of the homeland security committees' jurisdiction, which stand apart from other issues such as non-security related immigration issues (e.g., country quotas) and Coast Guard functions (e.g., aids to navigation) that were transferred to DHS, should be transferred to the homeland security committees but only if associated staff and budgets are also transferred.
4. Functions of DHS that are not core homeland security functions and are closely associated with core oversight responsibilities of non-homeland security committees, such as flood insurance, housing, and revenue collection, should remain under the jurisdiction of committees with expertise to properly oversee those functions.
5. Congress should adopt rules that, by default, limit the amount of time committees have to act on legislation referred to multiple committees before it is automatically reported out of committee.

Recommendations which do not require rule changes:

6. The homeland security committees should continue to provide broad oversight and policy direction to all homeland security functions in the federal government as well as in state, local, tribal, and territorial governments and the private sector where practicable.
7. DHS should continue to facilitate oversight by the homeland security committees by having all components actively engage with them regardless of whether they have jurisdiction in the rules of the House and Senate.
8. The homeland security committees should examine their staffing structures and reconsider the potential benefits of non-partisan staff. Where possible, joint engagements between multiple committees, chambers, and parties will reduce the burden on DHS.

9. The secretary of DHS should not testify before non-homeland security committees on a regular basis.
10. Hearings with the DHS secretary should be scheduled in a more efficient and accommodating manner.
11. DHS should limit its interactions with non-homeland security committees to what they are given jurisdiction over in the House and Senate rules. Joint briefings between the homeland security committees and others could be useful in minimizing the time and resources of oversight of the same topic.
12. The homeland security committees should seek to have their bills referred sequentially rather than jointly.
13. The homeland security committee chairs should seek various creative avenues with the speaker of the House, presiding officer of the Senate, and other committee chairs to move bills more efficiently through his or her respective chamber, while recognizing that other committees have vested interests in legislation that impact DHS.
14. The homeland security committees should take any parliamentary actions that will help them secure larger jurisdiction over homeland security topics.

APPENDIX B. HURRICANE KATRINA HEARINGS

Date	Committee	Title or Subject of Hearing	DHS Witness
9/28/05	House Energy & Commerce Subcommittee on Oversight and Investigations	Guarding Against Waste, Fraud, and Abuse in Post-Katrina Relief and Recovery: The Plans of Inspectors General	IG: Richard Skinner
9/29/05	House Energy & Commerce Subcommittee on Telecommunications and the Internet	Public Safety Communications from 9/11 to Katrina: Critical Public Policy Lessons	S&T: Dr. David Boyd
9/29/05	House Transportation & Infrastructure Subcommittee on Coast Guard & Maritime Transportation and House Resources Subcommittee on Fisheries & Oceans	Marine Debris	USCG: RADM Thomas Gilmour
9/29/05	Senate Commerce, Science & Transportation	Communications In A Disaster	S&T: Dr. David Boyd
10/6/05	House Appropriations Subcommittee on Homeland Security	Hurricane Katrina Funding and Financial Oversight	EP&R: David Paulison, Deputy Secretary Michael Jackson, IG Richard Skinner, CFO Andy Maner
10/6/05	House Transportation & Infrastructure Subcommittee on Economic Development, Public Buildings and Emergency Management	Recovering After Katrina: Ensuring that FEMA is up to the Task	Ken Burris, EP&R, IG Richard Skinner

Date	Committee	Title or Subject of Hearing	DHS Witness
10/6/05	Senate Homeland Security & Governmental Affairs Committee	FEMA Status Report on Recovery Efforts in the Gulf States	EP&R: David Paulison
10/18/05	Senate Banking, Housing & Urban Affairs Committee	National Flood Insurance Program	David Maurstad, EP&R
10/19/05	House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina	Response and Recovery Efforts	Secretary Michael Chertoff
10/20/05	House Financial Services Committee	Management and Oversight of the National Flood Insurance Program	David Maurstad, EP&R
10/20/05	Senate Homeland Security & Governmental Affairs Committee	“Hurricane Katrina in New Orleans: A flooded City, a Chaotic Response.”	Marty Bahamonde, Regional Director, External Affairs, Region One, Federal Emergency Management Agency
10/26/05	House Homeland Security Subcommittee on Emergency Preparedness, Science & Technology	Ensuring Operability During Catastrophic Events	Dr. David Boyd, S&T, Dr. Pete Fonash, IP
10/27/05	House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina	Hurricane Katrina: Preparedness and Response by the Department of Defense, the Coast Guard and the National Guard of Louisiana, Mississippi and Alabama	RADM Sirois
11/2/05	House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina	Role of Federal Contracting in Disaster Recovery	Greg Rothwell, CPO

Date	Committee	Title or Subject of Hearing	DHS Witness
11/8/05	Senate Small Business & Entrepreneurship	Hurricane Recovery Efforts for Small Business	Greg Rothwell, CPO (No Statement)
11/9/05	House Homeland Security Subcommittee on Emergency Preparedness, Science, and Technology and House Armed Services Subcommittee on Terrorism, Unconventional Threats and Capabilities	Responding to catastrophic Events: The Role of the Military and the National Guard in Disaster Response	Deputy Secretary Michael Jackson, Admrial Thomas Collins
11/9/05	House Homeland Security Subcommittee on Emergency Preparedness, Science, and Technology and House Armed Services Subcommittee on Terrorism, Unconventional Threats and Capabilities	Responding to catastrophic Events: The Role of the Military and the National Guard in Disaster Response	Deputy Secretary Michael Jackson, Admrial Thomas Collins
11/9/05	House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina	Preparedness and Response by the State of Alabama	Bruce Baughman, FEMA Coordinator (No Statement)
11/9/05	Senate Homeland Security & Governmental Affairs Committee	CG Role in Hurricane Katrina Response	RADM Duncan, CAPT Paskewich (Sector NOLA), CAPT Jones (NOLA) JOINT STATEMENT

Date	Committee	Title or Subject of Hearing	DHS Witness
12/7/05	House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina	Mississippi Operations	William L. Carwile, FEMA Coordinator
12/8/05	House Financial Services Committee	Katrina Housing	David Garratt, Acting Director Recovery Division FEMA
12/8/05	Senate Homeland Security & Governmental Affairs Committee	Hurricane Katrina: Perspectives of FEMA's Operations Professionals	Philip Parr, FEMA Coordinator, William L. Carwile, FEMA Coordinator
12/14/05	House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina	Louisiana Operations	Bill Lokey, FCO for LA, FEMA, Philip Parr, FEMA Coordinator
1/13/06	House Financial Services Subcommittee on Housing and Community Opportunity	Housing needs in the aftermath of hurricanes Katrina and Rita and various options available for reconstruction	Scott Wells, Federal Coordinating Officer for DR-1603-LA, FEMA
1/14/06	House Financial Services Subcommittee on Housing and Community Opportunity	Field hearing entitled "Housing Options in the Aftermath of Hurricanes Katrina and Rita."	Mr. James N. (Nick) Russo, FCO, FEMA DHS
1/17/06	Senate Homeland Security & Governmental Affairs Committee	"Hurricane Katrina: Mississippi's Recovery"	Donald Powell
1/24/06	Senate Homeland Security & Governmental Affairs Committee	"Preparing for a Catastrophe: The Hurricane Pam Exercise."	Wayne Fairley, FEMA Joint Field Office, Baton Rouge

Date	Committee	Title or Subject of Hearing	DHS Witness
1/30/06	Senate Homeland Security & Governmental Affairs Committee	Hurricane Katrina: Urban Search and Rescue in a Catastrophe	William Lokey Director of Response DHS-FEMA
2/6/06	Senate Homeland Security & Governmental Affairs Committee	Hurricane Katrina: Managing Law Enforcement and Communications in a Catastrophe	Michael Vancore-ICE Dr. Peter M. Fonash -IP/NCS
2/10/06	Senate Homeland Security & Governmental Affairs Committee	Hurricane Katrina: The Roles of DHS and FEMA Leadership	A/S Bob Stephan and Director Ops. Matt Broderick Michael Brown Patrick Rhode
2/13/06	Senate Homeland Security & Governmental Affairs Committee	Hurricane Katrina: Waste, Fraud, and Abuse Worsen the Disaster	Richard Skinner Inspector General U.S. Department of Homeland Security
2/15/06	Senate Banking, Housing, & Urban Affairs Committee	Rebuilding Needs in Katrina-Impacted Areas	Don Powell, Hurricane Czar David Paulison, Acting FEMA DIRECTOR
2/15/06	Senate Homeland Security & Governmental Affairs Committee	Hurricane Katrina: The Homeland Security Department's Preparation and Response (DHS Retooling FEMA)	Secretary CHERTOFF
2/16/06	House Transportation and Infrastructure Committee	Disasters and the Department of Homeland Security: Where Do We Go From Here? FEMA Retooling	Secretary CHERTOFF
3/8/06	Senate Appropriations Committee	FY06 Supplemental Appropriations: Hurricane Recovery	Secretary CHERTOFF

Date	Committee	Title or Subject of Hearing	DHS Witness
3/8/06	Senate Homeland Security & Governmental Affairs Committee	Hurricane Preparedness: Recommendations for Reform	DHS-IG Richard Skinner
3/9/06	House Financial Services Housing and Community Opportunity Subcommittee	Gulf Coast Rebuilding	Don Powell, Hurricane Czar (Federal Reconstruction Coordinator)
4/6/06	House Government Reform Committee	International Disaster Assistance Review	Casey Long, Director Intergovernmental Affairs - FEMA
4/10/06	Senate Homeland Security & Governmental Affairs Federal Financial Management, Government Information, and International Security Subcommittee	Management and Oversight of Federal Disaster Recovery: Debris Removal, Blue Roof Program, & Install Case Studies, FIELD HEARING Louisiana Supreme Court Bldg., 400 Royal Street, New Orleans, LA	Tina Burnette, FEMA Deputy Director for Acquisition Katrina/Rita
4/21/06	Senate Homeland Security & Governmental Affairs Committee	“FEMA’s Manufactured Housing Program: Haste Makes Waste.”	David Garratt, Director of Recovery Efforts - FEMA
5/4/06	House Government Reform Committee	Katrina Contracting	Elaine Duke, CPO Deidre Lee, Deputy Director for OPS, FEMA
5/18/06	Senate Special Committee on Aging	Caring For Seniors During a National Emergency	CRCL Director Dan Sutherland
5/24/06	House Government Reform Committee	Preparing for 2006 Hurricane Season	Under Secretary Foresman & FEMA Acting Director of Operations Bob Shea

Date	Committee	Title or Subject of Hearing	DHS Witness
6/8/06	Senate Homeland Security & Governmental Affairs Committee	National Emergency Management: Getting the Structure Right (FEMA's Place in Government)	Secretary Chertoff USCG ADM Allen
6/14/06	House Homeland Security Investigations Subcommittee	Waste, Fraud and Abuse in the Aftermath of Hurricane Katrina	Acting Deputy Director of Recovery Donna Dannels
9/7/06	Senate Appropriations Subcommittee on Homeland Security	How prepared is DHS for Disaster Response Today compared to One Year Ago	Admiral Allen (?) FEMA Under Secretary David Paulison PREP Under Secretary George Foresman

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APPENDIX C. 2010 BRIEFING DATA RELATIONAL TABLE

	CHS	CRS	CS&T	EPW	HAC	HAg	HASC	HE&C	HFA	HJC	HNR	HPSCI	HSci	HSGAC
CBP	54		5		50		1			1	9	15		36
CISOMB	1				1					3				1
CNE	6				1									1
CRCL	12									2				6
DHS	8							1					3	3
DNDO	11												4	8
FEMA	32		2		16									11
FLETC	2				3									6
GCR					1									
I&A	68		2		7		1					30		87
ICE	87	12	5		36			10	8	37	2	9		49
IGA	1													5
MGMT	31		1		9									29
NPPD	56		1		18			2				2	2	41
OCFO	3													5
OCIO														

	CHS	CRS	CS&T	EPW	HAC	HAg	HASC	HE&C	HFA	HJC	HNR	HPSCI	HSci	HSGAC
OGC	7									1	2			9
OHA	29				2									26
OIG	1													1
OPS	2													3
PLCY	18		4		1				2	2	2	2		13
PRIV	9		1											5
S&T	33				4	1		1					3	17
TSA	105		35		31		1	1		2		4		48
USCG	19		18	8	13			1		1		3	1	20
USCIS	9				11				1	11	2	1		3
USSS	7				2				1	8				3
Total	611	12	74	8	206	1	3	16	12	68	17	66	13	436

	OGR	SAC	SAg	SASC	SBud	SENR	SFin	SFR	SIA	SJC	SSB	SSCI	Misc	T&I	W&M	Total
CBP		70		1		3	8	1	1	7		3	23		7	295
CISOMB		1								2						9
CNE	1									1		1				11
CRCL																20

	OGR	SAC	SAg	SASC	SBud	SENR	SFin	SFR	SIA	SJC	SSB	SSCI	Misc	T&I	W&M	Total
DHS														1		16
DNDO		3														26
FEMA		29											7	3		100
FLETC		1										8	19			39
GCR																1
I&A		13						2		1		38	21			270
ICE	1	64				3		3		29			23			378
IGA									1					1		8
MGMT	2	12								12	1	4	1	1		103
NPPD	2	23		1								1	20			169
OCFO					1									1		10
OCIO																
OGC						1				1						21
OHA		2														59
OIG		1														3
OPS		1												1		7
PLCY	1	1				2		1	1	4		2	1	1		58
PRIV	1															16

	OGR	SAC	SAg	SASC	SBud	SENR	SFin	SFR	SIA	SJC	SSB	SSCI	Misc	T&I	W&M	Total
S&T		8	1													68
TSA	5	75						1		4		2	2	14		330
USCG	4	36						1				1	14	18		158
USCIS		3				2		2		6			5			56
USSS		13								6						40
Total	17	356	1	2	1	11	8	11	3	73	1	60	136	41	7	

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